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## Editorial

In September the Assessment Division will be devoting considerable resources to conducting a province-wide enumeration in fulfilment of requirements set out in the new *Municipal Elections Act*. *Aspects #8* considers the effects of the legislation in some detail. Consequently, we have extended our mailing list for this issue to include other persons affected by the Act such as municipal clerks and treasurers across the province.

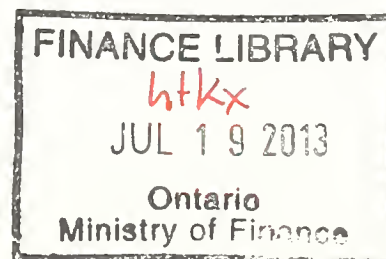
In response to a growing number of requests for articles dealing with valuation of individual property types, the issue contains opinions of Division staff on the assessment of converted townhouses, mobile homes, recreational land and government property.

*Aspects #8* also includes an index of articles which have appeared in the publication over the past two years. We hope that all persons receiving this issue will consider it a useful reference source.

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# REAL PROPERTY — A BASIS FOR MOBILE HOME TAXATION?

Andrew Ritchie  
Assessment Division

## THE APPEARANCE OF THE MOBILE HOME IN ONTARIO

According to recent estimates from the Canadian Mobile Home and Travel Trailer Association, there are approximately 20,000 occupied mobile homes in Ontario. This represents less than 3% of the total number of conventional single family detached houses in the province. Of the 20,000, about one third are located in mobile home parks or communities, with the heaviest concentration in southwestern and northern Ontario. The individual units are scattered throughout rural Ontario occupying fringe areas of small urban communities and farm properties. They are usually more than thirty-two feet in length and eight feet in width, resting on a permanent foundation and connected to the required facilities.

Portable dwelling units have appeared on the Ontario landscape since the 1930's, which marked the birth of the caravan or *travel trailer*. Used primarily for recreational or business purposes, the trailer was towed to and from its site by an automobile or similar vehicle. As the demand for low-cost housing increased—particularly after World War II—some manufacturers of these travel trailers discovered that it was more profitable to produce larger

and more livable units. Hence, the travel trailer sacrificed some of its mobility while still retaining its towing capability, and became *the trailer with permanent living characteristics*.

Continuing demands for cheap housing enhanced the competitiveness of the portable home industry with the end result that more emphasis was placed on a still larger and more permanent type of dwelling. Because of the increased size and changes in design and construction, the mobility factor had been reduced considerably; it became either too impractical or too expensive to relocate these units more than once or twice although the name *mobile home* became commonly associated with this new product. A fourth transformation in this development concerns the recent introduction of industrialized or *modular type housing*. Resembling the conventional brick or frame home, the modular unit usually requires manufacturing at one location and assembly at the chosen site.

The greatest activity in the manufacturing of portable living units has been in the production of recreational vehicles and mobile homes. The center of the mobile home industry in Ontario is in the southwestern part of the province while the remaining units

are manufactured in western Canada and the United States. The typical mobile home costs approximately \$10,000, which includes some furnishings, carpeting, appliances and other conveniences.

In 1970, Ontario sales for mobile homes reached new proportions. One out of every nineteen single-detached residential structures was a mobile home, compared to one out of every one hundred and fifty in 1963. This recent influx of mobiles into Ontario communities has not only created a new element in the existing housing supply but has helped to fill the increasing demand for low-cost housing. In Sudbury, the mobile home has played a vital role in housing the workers of the extractive resource industries. In other areas, the mobile home has been the only solution to instantly available housing.

## THE MOBILE HOME PARK— A NEW IMAGE

Although the majority of occupied mobile homes in Ontario are currently situated singly on vacant lots, new owners are finding it more economical and less difficult to locate in mobile home parks. Some retail distributors actually sell the unit pre-established on permanent foundations among other mobile homes in a planned development. However, despite the popularity and demand for this form of community living, its acceptability has been largely determined by community attitudes.

As a relative newcomer in the permanent housing field, the mobile home has sometimes been viewed with alarm and resentment; its presence has recalled popular fallacies about mobile homes and the people who live in them. These evoke images of "trailer slums" or wastelands of high-density housing which are commonly located

in the commercial or industrial sectors of a municipality. Because the residents of these communities are inherently mobile, and are uncommitted to improving the conditions of the environment around them, their presence has a depreciative effect on surrounding land values. They are considered an unattractive and undesirable aspect of any neighbourhood and consequently many Ontario municipalities have passed strict bylaws prohibiting trailers and discouraging their use as permanent living accommodations.

The above observations are generally valid criticisms of existing trailer parks but do not apply to the modern well-planned mobile home development. Just as the trailer with permanent living characteristics evolved into a more liveable and more acceptable form of permanent dwelling, similarly the trailer park has progressed to a position of reputable standing as a residential neighbourhood. Solidly constructed units located in spacious surroundings, tastefully landscaped and properly maintained, are gradually replacing the trailer camps as a permanent community, disclaiming earlier criticisms of substandard housing. Although these improvements will lessen, to some degree, the negative attitudes that have originated from "trailer slums", traditional misconceptions will prevail until a positive effort is made by mobile home manufacturers and government agencies to resolve many of these problems and propose acceptable standards of mobile home construction and park development.

To begin, the Canadian Standards Association has recently set regulations for the construction, wiring, plumbing and heating of mobile homes. In addition, planning departments at both the provincial and local government levels are studying the zoning implications of mobile home communities and their role in the housing needs of the future. One of the most controversial yet undecided issues is the question of taxation. What is an equitable contribution from a mobile home and how should it be collected?

## THE LICENCE FEE vs. THE PROPERTY TAX

As was explained earlier, the mobile home is a product of modernization and a descendant of the travel trailer. When trailers first appeared in Ontario municipalities, licensing provisions were put into effect to regulate their

movement. In addition, since permanent trailer residents required all, or nearly all, the municipal services that other residents of the municipality require, an "in lieu" tax or licence fee was imposed on each trailer. Existing licensing legislation states that all trailers may be levied a licence fee of not more than \$20 a month. Where a municipality operates a trailer camp, a monthly fee must be paid to the applicable school board for each child residing in a trailer camp. A conditional clause in the section states that the fee can be applied "notwithstanding such vehicle is jacked up or that its running gear is removed". Since this requirement defines one of the unique characteristics of a bona fide mobile home, many mobiles across the province are subject to a licence fee.

However, with the decreased mobility of the mobile home and its tendency to remain in one location for an extended period of time, it is not surprising that efforts have been made to tax mobile homes as realty. Licensing bylaws are often, but not always, disregarded in this case to avoid a dual tax. If, in the opinion of the assessor, the structure was permanently affixed to the land and fulfilled the definition of land as described in *The Assessment Act*, the mobile home was assessed in a manner similar to conventional single-detached houses. The results of a survey on taxation practices throughout Ontario indicated that mobile homes (in parks), including trailers with permanent characteristics, were normally licensed. Those on individually owned lots were more likely to be assessed. In other words, if the mobile home was owned by someone other than the owner of the land, it would be licensed, but if the owner of the unit also owned the land on which it was situated, it would be assessed. The existence of both a license fee and a property tax, and the diversified application of such levies from one municipality to another, creates a serious problem of obvious inconsistency and inequitable taxation. From the municipal standpoint, the license fee is an effective means of control and ensures the collection of taxes from mobile home owners on a direct and frequent basis. However, residents of more conventional living units claim that although mobile home owners receive their full share of municipal services, such as water, schools, fire and police protection, they do not pay a property tax and subsequently do not contribute their fair share to the municipal tax base. Conversely, mobile home owners claim that a license fee does

not clearly recognize the potential of a mobile home to remain on the land as a permanent structure and the right of the occupants to become residents of the municipality. Nor does the amount of the monthly payment bear any relationship to the value of a mobile home, its age or its size.

Hence we have three opinions from three different sources concerning the existing tax structure for mobile homes. Essentially these views advocate principles of certainty, adequacy, and equity—all of which constitute a good property tax system. But to assess a mobile home requires a significant amount of consideration in many areas. The first problem is whether mobile homes can be legally described as "land".

## A MOBILE HOME—PERSONAL OR REAL PROPERTY?

At the time of purchase, the mobile home can be justly defined as a movable personal possession and subsequently classified as a chattel. Although personal property is not subject to taxation in Ontario, there is some question as to whether various types of structures or chattels actually become part of realty when permanently affixed to the land. Can a mobile home be converted to real property by removing the wheels and placing it on a permanent foundation? One answer to this recurring and intriguing question was presented in a County Court case of *Douglas Perrin vs. the Township of Murray*. The appellant claimed that a trailer situated on his land for more than ten years should be liable to assessment instead of the current licence fee. The unit was described as fifty feet in length, resting upon a concrete foundation, connected to a septic tank and located on a large lot which was partially landscaped. Although the Court felt that the appellant's argument was well presented and logically advanced, the decision was as follows:

*In my mind, though there is much to support the contention of the appellant, the character of this trailer is exactly as it was when constructed. It was constructed as a trailer and still is a trailer. Apart from sitting on permanent or semi-permanent support nothing has been done to change it such as incorporating it into a larger building or extending it at either end or side. Neither is it changed in any way due to its attachment to permanent*



plumbing and septic tank systems. The only difference between this and any other trailer temporarily in a trailer park is the length of time it has been situated on its owner's lands and the fact that it is attached to the water supply and septic tank of the owner rather than sharing similar utilities of a camp owner for which a fee is paid.

It is my view, therefore, that it still has all the characteristics of a trailer which it had when constructed and as such it does not qualify as a building for the purpose of assessment.

The appeal is, therefore, dismissed."

In *Stack v. T. Eaton Co. et al.* (1902) 4 O.L.R. 335 various principles were put forth concerning "fixtures", one of which points out that "articles affixed to the land even slightly are to be considered part of the land unless the circumstances are such to show that they were to continue as chattels." (per Meridith, C.J. at p. 338). In the Perrin case, the Court felt that the unit in question was still portable, should continue to be referred to as a chattel, and should continue to be licensed under *The Municipal Act*. However, the circumstances leading to this decision did not actually reflect the existing condition or use of the structure as a permanent residence but focused upon what purpose the trailer was originally designed to fulfill. Mobile home manufacturers will argue that this principle is exactly what the industry has attempted to change. Mobility has been sacrificed for other considerations such as increased floor space, attractiveness and durability—all necessary ingredients for permanent occupancy.

From another point of view, the question of whether a mobile home can become immobile and hence an improvement on the land is arguable in this analogous situation. In *The Northern Broadcasting Co. v. The Improvement District of Mountjoy* (1950 S.C.R. 502) the Court held that a transformer used in a broadcasting station was assessable. Although the unit was not a fixture and not part of the land, the ruling was that the transformer was placed in the building with some idea of permanency, that it had acquired "locality" and that it was not intended to be moved from place to place. Similarly, if a mobile home is placed upon the land with some degree of permanency and the intent of the owner is to remain there for a prolonged period of time, the unit should be assessable.

However, the expressed intent of the owner is frequently governed by a list of circumstances which may or may not determine a degree of permanency. What are these circumstances and how does an assessor evaluate their contribution and distinguish between personal and real property?

## MEASURES OF PERMANENCY

Physical appearance is the most reliable indicator of long term occupancy in a mobile home. The fundamental difference between units manufactured twenty years ago and those sold today is commonly the difference between temporary and permanent dwellings. Size is an equally characteristic indication. Spacious units of 60' x 12' are conducive to permanent occupancy and hence are less mobile than smaller units. Also it is most uneconomical to move these larger units great distances with any frequency. It is almost impossible to move a double-wide mobile home after it has been put on foundations. Since mobility is minimized, the advantage of owning one of these units is one of convenience and economics and not of potential relocation. A third indication of permanency is whether the mobile home is physically attached to the land. Aside from the removal of the under-carriage and placing the structure on a solid foundation, other noticeable features are connection to community services such as telephone, hydro, sewers, and water. Evidence of some form of landscaping also points to the fact that the mobile home is permanently situated.

Aside from the physical characteristics that determine permanency, location criteria can be useful. Past experience in actual field assessments shows that mobile homes situated on individually owned lots were less mobile and hence more permanent than those in mobile parks. It would seem that the acquisition of a piece of land significantly added to the permanence of a mobile home while the rental of a lot in a mobile home park appeared to lessen the possibility of the owner's taking up permanent residency in the community. Evidently, those buyers who purchase land for their unit anticipate a prolonged residency in the community but are unable to afford a conventional house. On the other hand, mobile home owners who locate in parks may either be compelled to do so by municipal

bylaws or simply prefer a community environment. Besides, there is a growing popularity of parks where ownership of both the home and land is possible and where there is resident participation in establishing and maintaining a viable community. Certainly, the assessor must consider these innovations when attempting to measure the degree of permanence in mobile home living. Other considerations to examine are the payment terms between buyer and seller or between buyer and the park operator, the inclusion of mobile homes in municipal zoning ordinances and the favourable or unfavourable attitudes of the conventional homeowners.

In total, the above circumstances, properly conceived and adequately measured, should establish the intent of the owner to remain mobile or immobile. If permanency can be established using this criteria, the next step is to place an assessment on a mobile home.

## ASSESSABILITY

When a mobile home arrives in a municipality, the first problem is putting the potential ratepayer on the assessment roll. Probably the most logical approach to this task is to require that building permits be issued to these new residents from which supplementary assessment notices are created. Therefore, when the assessment office receives notification of the new structure the assessor can assume immediate completion and occupancy and proceed to calculate a market value assessment.

An unusual complication arises in deciding whom to tax. The solution is academic where the owner of the mobile home also owns the land and where owners rent out the homes as well as the land. But what is the proper procedure where the unit and the land on which it is situated are owned by two different people? If a mobile home is located on a rented site, who should be assessed—the home owner or the freeholder of the land? If the property is assessed and the owner moves from the site, should delinquent taxes become a lien upon the land, as well as upon the home? If it is to apply to the home only, then the value of the security is reduced by the ability of the mobile home owner to disappear, taking his home with him. Conversely, if the park owner is assessable for both home and land, he has a legitimate

complaint about having to pay taxes on another person's property and remain responsible for any back taxes due to vacated units. Therefore, the problem of whom to tax remains a questionable issue. Possibly, the principles of condominium assessment will resolve some of these difficulties.

A second problem concerns the applicability of conventional valuation methods in estimating the market value of mobile homes. Undoubtedly the existing rates in the *Handbook of Cost Factors* cannot be applied to these units because of their unique constructional nature. Special purpose properties, such as mobile homes, were not considered when these rates were calculated and therefore they cannot be relied upon in the determination of a replacement value. An alternative solution is to construct separate rates for mobile homes based on manu-

facturers' prices and current sale values, deducting depreciation and the cost of furnishings. However, the absence of an active resale market creates a difficulty in determining the amount of annual depreciation, which is usually more rapid for mobile homes than for conventional units. Attempts have been made to approximate the economic life of mobile homes but in some cases this has resulted in an assessment of 10% of their original value. Improvements in the construction of mobile homes as well as their location in modern communities should minimize this highly depreciative effect and stabilize the market value of a mobile.

### CONCLUSION

The portable home, in one form or another, will continue to appear on the Ontario landscape as the demand

for low-cost housing spirals. The United States has seen such a tremendous boom in the mobile home industry that 50% of all single family homes being built in the country today are moveable. The Province of Alberta has recently introduced specific tax legislation recognizing the future expansion of this type of housing. Although the current issues of mobile home development in Ontario center upon the planning and aesthetic implications, the tax problem is a contentious one that will require careful and intensive research. Real property assessment can be applied to a bona fide mobile home provided that permanency is firmly established. The conversion from a portable and personal possession to a structure of realty description must be complete and substantial before a measure of permanency can be suitably reached. □



**'MOBILE' HOMES**



# A Commentary on Mortgages

Charles K. Johnston, A.A.C.I.

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Mr. Johnston spent twenty-three years on the staff of Victoria and Grey Trust Company. He was Branch Mortgage Officer, later Branch Manager, in Kingston and finally Chief Mortgage Officer of the twenty-eight Branches of the company. Although he is retired, he is a member of the Assessment Review Court. [Ed.]

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## WHAT IS A MORTGAGE?

"A mortgage is the giving of land as security for the payment of a debt". This is a simple definition of a method of financing which has become so much a part of our everyday economy. Anger defines it: "Under what may be termed the 'old system' of registration prevailing in many provinces and in the greater part of Ontario—a mortgage is virtually a conveyance of the land as security for a debt, redeemable by payments. The *legal estate* is in the mortgagee, the mortgagor having but an *equity of redemption*, that is, the right to have land reconveyed to him upon satisfaction of debt."

"Under the 'new' or 'Torrens' system, generally called the Land Titles System, prevailing in parts of Ontario the Security is not a conveyance but merely a registered *Charge* upon the land for payment of the debt, which may be registered in much the same way as a mortgage."

There are two essential elements in the above. First, there is the borrowing of money to create the debt and second, there is the pledge of land as security. A mortgage must contain a covenant or a promise to pay, just as is found in a promissory note. If there is no promise to pay there is no valid mortgage and there have been many case law decisions dealing with the elements of the promise to pay. The promise to pay may be limited but it may not be entirely destroyed.

Nearly every mortgage contains a covenant as "The said mortgagor covenants with the said mortgagee that the mortgagor will pay the mortgage money and interest". It is called the *personal covenant* because it is an additional personal remedy against the mortgagor in addition to the remedies of foreclosure and sale. It does not run with the land so as to affect a purchaser who assumes the mortgage, as there is no privity of contract between him and the mortgagee; hence, the mortgagee cannot sue him on it even though the purchaser covenanted with the mortgagor to pay the mortgage. The only remedy which the mortgagee has, then, is foreclosure or sale or he may sue the original mortgagor on his covenant. The mortgagor is still liable on the covenant after he sells; but if he pays the mortgagee, he is entitled to a reconveyance.

From the above it will be seen that a good mortgage lender will always pay attention to the financial responsibility, the integrity, the character and the moral uprightness of the person borrowing the money. The security for the debt is, of course, vital, but one must never lose sight of the covenant. If the borrower is careless in payment of his obligations, if he is living beyond his means, if the mortgage debt service charge and taxes exceed 27% of his salary or income, if he has no other assets except the mortgaged premises, the probability is that he will be a poor borrower.



It is worth noting the liability of an executor or trustee on his covenant in a mortgage. If an executor of an estate has to borrow money by way of a mortgage on the real property of the deceased, care should be taken as to the manner in which the covenant is worded, in order that he does not become personally obligated. If the executor or trustee wishes to limit his liability to the assets comprising the trust estate he must make this quite clear.

The second part of the definition of a mortgage states that it is a pledge of land as security, etc. It is important to realize that a mortgage is in fact a conveyance of the land, subject to a condition—namely, if the debt is repaid, the land will be conveyed back to the borrower. Because a mortgage is a conveyance it must contain the same covenants as will be found in a deed of land:

*“And that the mortgagor has a good title in fee simple to the said land and that the mortgagor has the right to convey the said lands to the mortgagee, and that on default the mortgagee shall have quiet possession of the said lands free from all encumbrances, and that the mortgagor will execute such further assurances of the said lands as may be requisite; and that the mortgagor has done no act to encumber the said lands.”*

## THE EARLY DAYS OF MORTGAGES

A very brief history of the early days of mortgage documents should prove helpful in giving a better understanding of them. In the 12th century, when money was borrowed by way of a pledge of land as security, the common law construed the transaction very strictly indeed. If the money was to be repaid by a certain date and the debtor failed to produce the required sum on that date, the common law said that he forfeited his security and that he could not pay the debt after that date and get his land back. As a result of the strictness with which conditions for the repayment of a debt were construed, the unhappy debtors began to appeal to the king for justice on the grounds of equity.

An elaborate super-structure of mortgage law was developed by the Courts of Chancery. A man would lose his land by the provisions of the common law, and then, to get relief, he would go to the Court of Chancery which would enquire into the facts to see if it was actually a borrowing transaction. Sometimes unscrupulous lenders of the 13th and 14th centuries would require a debtor to give them an absolute conveyance of the land without reference to any provision for a reconveyance. To get his land back, the debtor would go to the Court of Chancery and prove that he had just given the deed as security for a debt. If the Court of Chancery believed him, it would order the creditor to reconvey the land on payment of the amount owing.

It was the Courts of Chancery or equity which coined the phrase, “Once a mortgage, always a mortgage”, meaning thereby that if it was really a pledge of the land for a debt, then it would always have that characteristic, no matter by what subtle means the Creditor tried to call it something else or clothe it in other more absolute forms. Having two different sets of courts interpreting the same document or dealing with the same transaction led to confusion, extra expense and frustration. Therefore, in the middle of the nineteenth century, the courts of law and the courts of equity were combined and henceforth a judge had to apply both sets of law to any case which came before him.

The result is that, today, the present law of mortgage is the joint product of the ancient common law, the intermediate equity law and the modern statute law. This is the reason that a lawyer sometimes cannot be too definite as to where a mortgagee stands in a particular case of default. He may know what the common law would say about the

problem and he may know what the statutes provide for in such a situation; yet he cannot be sure to what extent the judge may apply principles of equity to give relief to the mortgagor.

It is well to understand that the mortgage document must follow fairly well defined and recognized lines. Collateral advantages which are stipulated for in a mortgage may well be void on the grounds that they interfere with the mortgagor's right to redeem.

To summarize—according to the usual mortgage contract there is an actual conveyance of the lands to the mortgagee with the provision that the mortgagee become the absolute owner of the pledged property upon default in payment at a stipulated time. The mortgagor has a legal right to redeem his property by a strict observance of the mortgage contract, but in addition to this he has an equitable right to redeem after he has lost his legal right by his own default. To extinguish this equitable right to redeem, the mortgagee must take foreclosure proceedings and have it declared that the mortgagor is no longer entitled to even an equitable interest in the property.

## WHAT CONSTITUTES “REAL PROPERTY” IN A MORTGAGE?

Now consider what property is included in a mortgage of real property; in other words, to what extent does the mortgage affix itself to crops, timber, erections, buildings and even chattels which may be on the land at the time of the execution of the mortgage or which may be brought upon the land or erected or built after the giving of the mortgage? A typical mortgage form contains these words—“Together with all buildings, erections, improvements, heating apparatus, radiators, boilers, furnaces, plumbing fixtures, fittings, equipment, refrigeration plant, and machinery which are now or may at any time hereafter be brought upon the said lands whether moveable or stationary”. This is a very sweeping clause, but it should be remembered that calling a chattel a fixture does not make it so. If a contest develops, the courts will decide what in law the mortgage may cover and what cannot fairly come under its purview.

There can be difficult problems also with farm mortgages when they go into default. For instance, if there is timber on the farm, the mortgagor can cut the timber in a reasonable manner when the mortgage is not in default, but if the mortgage goes into default and the mortgagor appears to be selling timber in a reckless manner, the mortgagee can apply to the court and get an injunction to restrain the cutting and removal of timber. There is a covenant in the mortgage which usually reads: “If the mortgagor neglects to keep the premises in good condition and repair or commits or permits any act of waste on the said lands, etc. . . certain consequences follow”. So long as the mortgage is not in default, the mortgagor can cut and sell the crops. However, if the mortgagee takes possession of the lands because of default, the mortgagee has the right to all standing crops and may harvest them.

## LEASES AS SECURITY

Because a good deal of loaning in these expanding days relates to commercial properties, leases are frequently assigned to the mortgagee as collateral security. If the property is leased to a very outstanding tenant for a period of time equal to or greater than the period of the mortgage, this lease enhances the value of the real property and insures that there will always be sufficient income to service the loan.

It is, therefore, important to be certain that the mortgagee has proper rights in the lease, and that the lease will not be terminated by mutual consent between the mortgagor and the tenant without the consent and approval of the mortgagee. If the lease is registered prior to the mortgage, the mortgagee should satisfy himself regarding three important points:

- (a) That the conditions of the prior lease are such that the preservation of the mortgaged security is assured and that the rental is sufficient to meet the mortgage obligations and leave a little over for the owner of the equity.
- (b) The lease should not provide for any prepayment of rent or any free period of occupancy at the end of the lease.
- (c) That notice is served on the tenant that the property has been mortgaged and that the lease must not be modified or altered without the consent of the mortgagee.

## INTEREST

It is well to note that if no rate of interest is stated in the mortgage, then no interest whatever can be charged until the principal falls due. If payment is not made as provided, arrears of principal will bear interest at the legal rate. Where mortgage money is advanced to the borrower in instalments, interest can be charged only from the date of the advances unless there is an agreement to the contrary between the parties. The fact that the mortgagor acknowledges receipt of the money in the mortgage document is not sufficient to enable the mortgagee to charge interest from its date.

Interest may be calculated quarterly or half-yearly or yearly if separate definite instalments of principal are provided for in the mortgage instrument. However, if the payments of interest and principal are blended, then the provisions of the *Dominion Interest Act* must be carefully observed. Section 6 of that Act provides that whenever any principal or interest secured by a mortgage of real estate is by the mortgage made payable on the sinking fund plan or on any plan under which the payments of principal money and interest are blended or on any plan which involves an allowance of interest on stipulated repayments, no interest whatsoever shall be chargeable unless the mortgage contains a statement showing the amount of such principal and the rate of interest chargeable thereon calculated yearly or half yearly, *not* in advance.

It is, perhaps, worth commenting on these words, "not in advance", because many people who are paying a monthly sum on a mortgage regard it as rent and are under the impression that when they pay, for instance, on February 1st, they are paying interest for the month of February, when actually on February 1st they are paying interest for the month of January. Rent is payable in advance; interest is payable not in advance but *when it has been earned*.

The modern repayment of the mortgage debt combines the principal and interest most frequently. A monthly payment such as this is known as a blended payment and is amortized to return the borrowed principal to the mortgagee at the end of a given number of years (the term of the mortgage), together with all interest owing. Although the monthly payment is the same each month, the principal amount therein varies from month to month. In the early years of the mortgage it is a very small amount—the interest representing the bulk of the monthly payment. Slowly, however, the principal amount applied to the mortgage grows and the interest becomes the smaller portion of the monthly payment, until the final payments are made up largely of principal.

This amortized payment is accepted generally because it tends to keep the payments within the monthly instalment buying which is so popular today. It also provides the institutional lender with a steady flow of cash for reinvestment.

## MORTGAGES AS INVESTMENTS

Since mortgages today provide an excellent form of investment, the present day mortgagee is generally a large lending institution, e.g. life insurance company, trust company, bank, etc., or it may be even a Crown Corporation such as Central Mortgage and Housing Corporation.

The equity required of the mortgagor has been reduced gradually in the past two decades until now it is possible for a person to purchase a home providing he can arrange 10% of the purchase price in cash.

These have been rambling thoughts on a topic which has become so much of our every day life and has touched only the highlights. It will be appreciated that the subject can hardly be covered adequately in such a short space. It is hoped, however, that sufficient interest has been created to stimulate further study of this interesting subject which is so close to our daily living. When intricate points of law arise on the subject the wisest course to take is to consult a lawyer who specializes in mortgages. □



# Recreation

J. L. Moloney

## *how much is it worth?*

Peterborough Office

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Mr. Moloney began as an assessor in the Townships of Douro and Harvey in the county of Peterborough. He became county assessor of Lennox and Addington in 1956 and Assessment Commissioner for the County of Peterborough in 1967. Upon provincial assumption of assessment, he became General Valuation Manager in the Haliburton-Peterborough-Victoria Assessment Region. He has been active in the I.M.A., the County and District Assessors Association of Ontario, the Appraisal Institute and the I.A.A.O. [Ed.]

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The term 'recreational lands' refers to those areas whose principal use is associated with the leisure time activities of the populace. Into this category fall hunting lands, woodland retreats for both summer and winter use, boat house sites, summer cottage lots, islands, ski slopes and parklands. The magnitude of the appraisal problems associated with the valuation of recreational lands is accentuated when it is realized that in many municipalities and indeed in some regions the aggregate value of these lands is greater than that of any other single property classification. In some municipalities this aggregate value is greater than that of all other property classifications combined. The quantity of land devoted to recreational uses has been on the increase for at least three decades and to date there is little evidence of abatement in this trend.

### HUNTING LANDS

Hunting preserves range in size from 100 or 200 acres to 4000 acres. These lands are principally of two classes. First, lands of a marginal nature from an agricultural standpoint and which have been traditionally devoted to cattle ranching are now being purchased by individuals and groups for hunting. Former timber limits in areas inhabited by deer are also being acquired for hunting. Usually there is sufficient trading in this type of property to provide evidence of market value.

However, care must be exercised in the first instance to ensure that the lands are in fact being bought for hunting and not by farmers for ranching, in which case the provisions of section 27(3) of *The Assessment Act* apply. This section provides that "*in ascertaining the market value of farm lands used only for farm purposes by the owner thereof or used only for farm purposes by a tenant of such an owner and buildings thereon used solely for farm purposes, including the residence of the owner or tenant and of his employees and their families on the farm lands, consideration shall be given to the market value of such lands and buildings for farming purposes only, and in determining such market value consideration shall not be given to sales of lands and buildings to persons whose principal occupation is other than farming*". The prices paid for similar lands by the two groups may or may not be the same.

In the second instance, much of the land commonly referred to as 'deer country' may fall within the definition of "woodlands" as described in section 27(8) of *The Assessment Act* which states that "*'woodlands' means lands having not less than 400 trees per acre of all sizes, or 300 trees measuring over two inches in diameter, or 200 trees measuring over five inches in diameter, or 100 trees measuring over eight inches in diameter (all such measurements to be taken at four and one-half feet from the ground), of one or more of the following kinds: white or Norway pine, white or Norway spruce, hemlock, tamarack, oak, ash, elm, hickory,*

*basswood, tulip (white wood), black cherry, walnut, butternut, chestnut, hard maple, soft maple, cedar, sycamore, beech, black locust, or catalpa, or any other variety that may be designated by Order in Council, and which lands have been set apart by the owner with the object chiefly, but not necessarily solely, of fostering the growth of the trees thereon and that are fenced and not used for grazing purposes."*

Section 27(7) provides that "Land used as woodlands or orchards shall not be assessed at a greater value by reason of the presence of the trees thereon nor shall it be assessed at a lesser value by reason of the removal of the trees."

It is important, therefore, to select sales of lands which have been recently "cut over" or where the timber has been reserved to the vendor in order to eliminate the possibility that the hunters had attached some value to existing timber in the prices paid for such lands.

A third category of hunting land sometimes encountered is in the form of swamp land which, in recent years, has become flooded by the effects of beaver dams. This type of land is in demand in some areas for duck hunting. Consequently, the assessor must not conclude that what may seem like worthless flooded land is in fact that, without carefully examining all available sales of such land.

Finally, it may be found that hunting land in parcels of 1000 acres or more has a higher unit value than smaller parcels. In instances where 100 acre and 200 acre parcels back onto Crown land, the converse may be true. Hence it becomes important to establish at what point unit values change insofar as the size of the land is concerned.

## COUNTRY RETREATS

There is an increasing demand by city people for rural acreages which are accessible year round and are within reasonable distances from urban centres. Abandoned farms and rough land acreages on year round roads come under this category. If the original farmhouse is still standing it is frequently made fit for occupancy. Vacant land is improved with cabins after the manner of the conventional summer cottage. While these properties have no access to lakes or rivers they are used on weekends in summer and as vacation homes, as well as for snowmobiling in the winter. A creek crossing the property can increase the value by as much as 25%.

Consequently, these properties take on a value which is much in excess of their value in their former use. All sales of such properties must be analyzed separately, in order to obtain an indication of the value which the buyers and sellers attach to this type of recreational land. It will be found that the productive capabilities of the soil are not a consideration in the valuation of such land.

## WATERFRONT LANDS

In Ontario, lands fronting on lakes and rivers are the most sought after type of recreational land. Such lands range in size from boat launching sites having a width of fifteen feet and an area of 122 sq. ft. to typical cottage lots of from 80' to 200' with many sites 500', 600' and greater, in width, to development areas of several thousand acres with miles of shoreline.

There is, generally speaking, adequate market evidence to permit a satisfactory estimate of the typical cottage site. This is not to minimize the magnitude of the task. Every

lake has its own land values depending on the size of the lake, the nature of the upland terrain, the quality of the beach or offshore land and the location of the sites in relation to road access, distance from highways and urban centers, as well as proximity to marinas, shopping facilities and other requisites considered important by seasonal residents.

Prior to the introduction of province-wide subdivision control in 1971, in high priced areas where the demand for land is great, large sites seemed to have the same unit value for every foot of frontage as long as it was subdividable. It appears now that buyers are not prepared to pay the top dollar for every foot of land on larger sites when the extra may not be sold even if the owner should choose to do so.

In the waterfront land classification, probably the most substantial appraisal problems occur in what is commonly referred to as development land. These potential subdivisions vary in size from less than 100 acres in area and a few hundred feet of frontage to 4,000 acres and as much as thirteen miles of shoreline.

Since it is usually difficult to obtain many sales of parcels of comparable size, it is generally necessary to attempt a value estimate by means of the "Cost of Development Method". This approach contemplates, as a starting point, an estimate of the number of possible cottage sites into which the parcel will subdivide. The traditional method of making such an estimate is to divide the total frontage by the average width of lots found in other subdivisions in the locality making due allowance for public areas. Now, as a result of the great public interest in the problems of pollution and ecology, it appears that the main criterion is not the amount of frontage but the area of the lake surface. Some subdividers are now thinking in terms of one cottage site for each four acres of water surface. A more sophisticated method of determining the number of sites is to exclude a water area of 400' out from the shoreline, since this is the area devoted to swimming and docking activities, and to divide the remaining lake area by one and a half. The rationale for this procedure is that experience indicates there is an average of one and a half boats for every cottage on a given lake.

It should be kept in mind that this density is only possible where lakes are fairly deep with a good inlet and outlet. The area of the development parcel must also provide for lot sizes of from one half acre to two acres depending on the nature of the terrain and the depth of soil.

After calculating the number of sites in this way, the value estimate is proceeded with in the usual manner. It should be emphasized, however, that where sales of development lands exist the "comparative approach" is still the most reliable method of estimating the value of potential subdivision land.

## ISLANDS

Island sites present a problem that is frequently more difficult than is the case in mainland valuations. While the same criteria apply as in mainland sites, (topography, tree cover, nature of the shoreline, and the like) the fact that they can only be reached by boat puts them in a class by themselves. This being the case, distance from marinas or other suitable docking facilities becomes a prime consideration. Availability of hydro can sometimes be a factor also. These considerations can in some cases reduce the value of island sites by as much as 50% of mainland sites on the same lake.

However, in popular resort areas, the additional privacy and snob appeal of island locations can completely cancel out any loss in value from an access standpoint.



Island sites, whether entire islands or parts of larger islands, are seldom less than one half acre in area. The size ranges from this to as much as ten acres and in some cases more. As is the case with large mainland sites, unit values seem to be less for larger sites. In one area with which I am familiar, sales evidence indicates the value per acre of a ten acre site is only about 20% of the value per acre of a half acre site. Very large islands may have subdivision possibilities and, if such is the case, the value estimate may be proceeded with in the same manner as other development land.

PARKLANDS

Probably the most difficult appraisal problems in recreational lands present themselves in the valuation of large tracts assembled and occupied by the owners for the purposes of hunting, fishing, forest management and recreational preserves. The main difficulty lies in the fact that few sales of such holdings occur. It is obvious that sales of 200 acre and 500 acre parcels cannot be considered as reasonable comparables in the valuation of 60,000 acre tracts. It will be necessary to go beyond the assessment region and probably as far back as ten years to obtain sales information that will be useful in the valuation of such lands.

It must be kept in mind that, while such properties may comprise portions of four municipalities, the entire tract must be considered as one property for the purpose of the value estimate. The resulting valuation may have to be ap-

portioned for the purpose of the assessment roll, but the initial estimate must be a single figure.

Such lands usually encompass a number of lakes, sometimes more than fifteen. It is important that the water area, and in some instances the frontage, of the sale properties are at least somewhat proportionate to that of the property being valued. The lakes will usually be less than 100 acres in area each, but some may be as large as 400 acres. Hence the size of the lakes as well as their number is a consideration in making comparisons. In most instances the Market Data Approach will be the only method available to the assessor in the valuation of these lands.

CONCLUSION

It can be said that recreational land is one class of realty where mass appraisal techniques can only be applied successfully in certain categories. Probably the valuation of typical cottage sites provides the best opportunity for the application of mass methods. Many instances will be found in virtually every assessment region where recreational properties present an individual appraisal problem. It is essential that the assessors recognize these instances whenever and wherever they occur. For, to make good estimates in the case of the dwellings and the stores in a municipality and miss the mark by a wide margin on the more valuable property does nothing for the cause of equitable assessment and little to convince the public of the competence of the Assessment Division. □

REGIONAL  
DELEGATES  
for  
aspects

Eastern Ontario Assessment Area

- 1. Prescott & Russell-Stormont, Dundas & Glengary—Mr. H. Morris
- 2. Lanark-Leeds & Grenville—Mr. G. Grey
- 3. Ottawa-Carleton—Mr. H. Hafenbrack
- 4. Renfrew—Mr. H. R. Barkell
- 5. Frontenac-Lennox & Addington—Mr. K. Froats
- 6. Hastings-Prince Edward—Mr. J. A. Smith
- 7. Haliburton-Peterborough-Victoria—Mr. J. Guerin
- 8. Northumberland & Durham—Mr. J. Little

Central Ontario Assessment Area

- 9. City of Toronto—Mr. L. Shimbart
- 10. North York—Mr. A. W. Wilson
- 11. Scarborough-East York—Mr. D. Struke
- 12. Etobicoke-York—Mr. J. Kirk
- 13. Ontario—Bill Robinson
- 14. York—Mr. W. Dewsbury
- 15. Halton-Peel—Mrs. Barbara Trotter
- 16. Simcoe—Mr. M. Lumsden
- 17. Muskoka—Mr. R. McCann

Western Ontario Assessment Area

- 18. Niagara—J. Harriman
- 19. Wentworth—Mr. L. B. Charlton
- 20. Brant-Haldimand-Norfolk—Mr. J. Huff
- 21. Waterloo—Mr. C. Meadows
- 22. Dufferin-Wellington—Mr. I. Dunlop
- 23. Elgin-Middlesex-Oxford—Mr. S. Marsh
- 24. Huron-Perth—Mr. S. Stephens
- 25. Bruce-Grey—Mr. R. Robertson
- 26. Kent-Lambton—Mr. A. Smith
- 27. Essex—Mr. J. Storey

Northern Assessment Area

- 28. Nipissing-Parry Sound—Mr. L. Warner
- 29. Cochrane-Timiskaming—Mr. B. Boyd
- 30. Manitoulin-Sudbury—Mr. I. McJannet
- 31. Algoma—Mr. F. St. Jules
- 32. Kenora-Rainy River-Thunder Bay—Mr. I. Zhiha

# What's so Special about *Townhouses?*

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Like the article in Aspects #7 entitled "Sales Analysis of Single Family Residences in Mississauga", this study is taken from a project completed by three assessors as part of the Assessor Trainee Programme, Economics Course, which is sponsored by the Assessment Division. [Ed.]

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A. McKaye  
M. O'Dowd  
J. Quek  
City of Toronto Office

In the course of a massive reassessment programme as is presently underway in Ontario, difficulties arise in the valuation of certain types of property.\* In the City of Toronto alone, there are approximately 111,000 residential properties involved in this programme. Obviously, in an area of this size, one cannot expect to find complete homogeneity. The purpose of the following study is to examine the problems of market value assessment in relation to one kind of property to which the usual methods of mass appraisal do not apply.

## THE STUDY AREA

Don Vale, commonly referred to as "Upper Cabbagetown", has recently undergone a facelifting. Bounded on the west by Parliament Street, on the north by Bloor Street, on the east by the Don Valley, and on the south by Gerrard Street, it is close to "Cabbagetown", an area where there is an abundance of old homes that have deteriorated badly since the beginning of the century.

With the advent of town housing, Upper Cabbagetown received much attention and has become a fashionable dis-

trict in which to take up residence. It has all the benefits of downtown living: it is close to shopping plazas, public transportation, main traffic arteries. It also has the advantage of a park and even a zoo.

This area has attracted two main sources of interest: entrepreneurs, who, since 1966, have conducted massive renovations with the intention of selling the houses at substantial profits, and amateur renovators, who have made less extensive alterations for their own use.

These properties generally fall into a category which shall be called "converted town houses" for purposes of convenience in this paper. These town houses share certain characteristics: they are all row or semi-detached houses, of frame construction, built around or before 1900, and the size of their lots and their total living area, excluding basement additives, are comparable.

On the exterior, the differences between a town house and an unconverted property lie in four main areas:

- (i) the exterior walls have either been repainted or restuccoed,
- (ii) the original front porch has been replaced by concrete platform and steps, perhaps with a wrought-iron railing,
- (iii) the main first floor window has been replaced by a large 'picture' window,
- (iv) the original front door has been replaced by a

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\*The authors wish to acknowledge the help of Messrs. John Elliott, Emil Chmeleski and Paul Rivers in the completion of this study.



heavier door, usually ornamented with a brass knocker or mail box.

No major structural renovations, therefore, have been carried out on the exterior of the building.

Building permit data was studied for information on what constituted a typical conversion, a sample of which is illustrated below.

#### *Date of Permit—March 1967*

*"Alter interior of main floor of single family dwelling, install new heating ducts, rewire, install new copper plumbing, replaster throughout. Install double sink, four piece bath, five foot vanity, two piece bath modernized. Hardwood floor in five rooms, sliding glass doors."*

Estimates of the costs involved in these conversions range from \$3,000, for a minimal conversion amounting to little more than a painting, to \$10,000, for a thorough job using high quality materials. \$6,000 was the average figure arrived at from a study of numerous articles appearing in the press since 1966.

## THE STUDY

From an original selection of sixty town houses in Don Vale, the study was limited to sixteen, due to insufficient data on pre- and post-renovation values. Further, the need for sales data necessarily eliminated those properties which had been remodelled by amateurs as a hobby.

One of the most outstanding features of these properties is the considerable difference between their original pre-renovation sale price and their current post-renovation market price, a difference that accounts for substantially more than the cost of alterations and a reasonable profit. This is shown in Table I below.

Table I

| First Sale |        | Second Sale |        | Difference | Difference    |
|------------|--------|-------------|--------|------------|---------------|
| Date       | Price  | Date        | Price  | \$         | Time (months) |
| 12/69      | 17,250 | 8/70        | 34,000 | 16,750     | 8             |
| 12/70      | 18,770 | 8/71        | 37,500 | 18,730     | 8             |
| 4/66       | 10,000 | 6/69        | 30,900 | 20,900     | 34            |
| 3/66       | 8,250  | 5/68        | 24,900 | 16,650     | 26            |
| 3/66       | 8,250  | 6/70        | 27,500 | 19,250     | 30            |
| 1/66       | 7,800  | 4/69        | 30,000 | 22,200     | 40            |
| 1/66       | 7,300  | 6/68        | 26,000 | 18,700     | 30            |
| 5/67       | 12,400 | 9/68        | 32,300 | 19,900     | 16            |
| 12/67      | 11,500 | 3/68        | 32,500 | 21,000     | 3             |
| 10/68      | 17,500 | 7/69        | 33,900 | 16,400     | 9             |
| 8/66       | 9,000  | 7/68        | 29,200 | 20,200     | 23            |
| 8/67       | 11,500 | 4/68        | 32,500 | 21,000     | 8             |
| 4/67       | 15,500 | 4/70        | 31,000 | 15,500     | 36            |
| 8/67       | 12,000 | 6/68        | 29,000 | 17,000     | 10            |
| 8/65       | 9,250  | 3/68        | 29,600 | 20,350     | 31            |
| 2/68       | 12,725 | 4/69        | 35,900 | 23,175     | 14            |

It can be seen from this table that the properties sold, sometimes after a very short time, at prices that bore no relationship to the original value plus the cost of conversion. The cost of conversion, it must be noted, includes only interior renovation and exterior beautification. In no instance was there remodeling or reconditioning of the basic structure of the buildings. Yet the original sale price, to which is added a reasonable estimate of the conversion cost plus normal profit, comes nowhere near the post-conversion sale price. And there is nothing in the building itself to fully account for the enormous increase in value.

How, then, can the vast increase in selling price over cost price be otherwise accounted for? Obviously, there is some characteristic that is not related to the costs of conversion, nor to the difficulties encountered in mortgage financing. (It has been reported that mortgage lenders are extremely cautious and conservative with town house renovators which makes this type of house so desirable.) Perhaps a sociological perspective will lend some clarity to the issue.

## THE SOCIOLOGICAL INFLUENCE

The Don Vale area has undergone a peculiar social development over recent years which, to a large extent, accounts for the radical increase in property values. At the turn of the century, the style of the homes was representative of an upper-middle class neighbourhood. They were remodeled into row-housing that was fashionable among the middle classes prior to the First World War. Over the years, the district gradually deteriorated, along with other areas further south, into what is now called "Cabbagetown". Until about 1965, working class people dominated the neighbourhood.

This pattern began to break down when the St. James Town complex was constructed and many working class homes were demolished. The end result was a housing shortage. St. James Town was also responsible for an "upgrading" of the social status of the general vicinity; with the luxury high-rise apartment dwellings came a general improvement in the district.

Further, since 1965, a trend has developed, among the upper middle class in particular, toward urban living as opposed to dreary, box-like suburbia. Also young 'arty' or creative people who like city life have been attracted to the area and have contributed to the impression that the new residents of Don Vale are 'middle class swingers'.

What are the reasons for this new trend? Why is there a preference for city living? Why is this kind of town house proving so popular among such people? And why has this area been chosen over others in Toronto?

Despite a general ill-feeling associated with downtown living, it has some distinct advantages. Transportation is easier, there is a greater variety of recreational activity, the range of social contacts is wider, and there is a sense of anonymity which some people enjoy.

But, most important, people are buying remodeled town houses in the city for economic reasons. They represent a better value for their money than alternative living accommodations in the centre of the city, such as new or used single family dwellings, new town houses, or rental accommodations. In June, 1971, the average price for a new house in Metro was \$36,786 and for a resale home \$31,000. Building lots close to the city were rare and a price of \$25,000 for them was not uncommon. Aside from the fact that rental accommodation is very expensive, the 'philosophy of home ownership' is prevalent among many middle-income Canadians. Houses are a safe and even profitable investment in the face of inflation.

Finally, aside from the preference for living near the city centre and the lack of economical alternatives, the choice of these converted town houses stems from the fact that potential buyers regard them as cosy, comfortable and charming to live in.

There are several reasons for the concentration of these phenomena in the Don Vale area. First, city living is "where the action is". Second, proximity to public transportation makes Don Vale a convenient spot. Also its nearness to downtown makes the idea of walking to work appealing. But, above all, although Don Vale is close to the business district, it is well insulated from the worst aspects of the

city; the St. James Cemetery to the north and the Don Valley to the east contribute to a sense of privacy. Third, most of the other downtown residential areas are 'ethnic' communities and there is a general lack of desire on the part of 'outsiders' to invade them. But most significant is that the age, type and quality of these houses were most suited to town house conversion. Because their price was right the cost of extensive renovations was both worthwhile and profitable.

These influences, then, produced a marked change in the quality as well as the social characteristics of the neighbourhood, both of which have led to changes in property values. It would appear that social factors do have a strong impact on economic factors (i.e. supply and demand) which have in turn led to an increase in the market value of these properties.

## ASSESSMENT PROCEDURES

What implications does all this have for the programme of market value assessment in Ontario? How can the assessor place a value on a property which does not conform to the rules by which he works? The rules must somehow be modified so that an equitable assessment can be arrived at.

The current reassessment is being conducted under the assumption that an accurate estimate of the market value of a property can be obtained by adding to the value of a similar property the Replacement Cost New (RCN), adjusted by a local sales modifier and depreciated to a point where the loss of value of the building, due to its age and degree of obsolescence, is adequately reflected. Under 'normal' conditions, this approach is quite valid but, for properties such as those in Don Vale, problems arise.

One of the factors involved in applying the cost technique is the Depreciation Table which assists in determining the effective age of a property. The effective age is based on the present condition of the structure and its remaining useful life. This concept provides a method of compensating for the differences between old materials and superior workmanship and new materials and modern workmanship upon which the *Handbook of Cost Factors* are predicated. However, a difficulty arises in dealing with houses like the subject properties. Allowance must be made for the fact that, while the interior is virtually all new, the foundations, footings, and exterior shell are the original. Does the interior remodeling make the house less likely to collapse after 80 years when its estimated average useful life was initially only 60 years?

Another problem associated with the cost technique is the application of a Local Modifier, a factor which quantifies the difference in construction costs between those of the *Handbook* and present costs in terms of location and time. No adjustment has to be made for place since Metro is the base location for the cost method used in Ontario; the only adjustment necessary is for time.

Further, after a property has been inspected and classified and the market value of the building portion has been arrived at, it is necessary to establish a value for the land portion. In the City of Toronto, this is perhaps the most difficult stage of the entire reassessment programme. The reason for this is obvious: how can a realistic valuation of land be obtained when there are so few sales of this type to permit meaningful analysis? The alternative to obtaining data about land from the market is to attempt to arrive at a 'land residual value' by subtracting a reliable value for the building from the total sale price. When this type of analysis is applied to the sales considered in this study, (i.e. total sale price—RCN less depreciation), it is found that the land residual value equals about 75% of the sale price. This

would mean a value for land in excess of \$20 per square foot or well over \$1300 per front foot. Either figure is a totally unrealistic estimate of land value almost anywhere in Toronto, least of all in Don Vale, an economically depressed area where lots rarely exceed 1800 square feet.

In view of these data, it becomes clear that any value given to these lots must be a result of the improvement on the land, since land zoning regulations would not permit construction of a single dwelling on any of these lots. Therefore, any value must be based on knowledge of the area and the market as a whole. From studying the market in the City of Toronto, a figure of \$13,500 was arrived at as an estimate of current value of an average sized lot of about 17' x 75'.

On the bases for valuation outlined above, final values, approximating 1971 market values, can be placed on the subject properties. But the differences between final values and the latest available sales prices range from \$10,800 to \$13,500. Hence the assessor is faced with the problem of arriving at equitable values on these properties. How can he account for a difference of \$13,000 between his theoretical estimate of market value and the sale price? Which value is to be used? If he uses the cost approach, how can the difference be explained?

It is obvious that the subject properties are exceptional in nature or otherwise unadaptable to typical assessment procedures. Similar situations occur in ethnic or ghetto areas where the prices paid for properties differ markedly from those paid for similar properties in a different area of town. The variations can, in part, be attributed to location, but an enormous premium is paid which is attributable to the property as a whole. In Don Vale, the demand is for converted town houses which causes the price to rise in the face of limited supply, and a portion of the price paid is a premium for living in a property known as a "town house".

## CONCLUSION

Don Vale presents a clear illustration of the difficulties that arise when the conventional methods of valuation are applied to an unusual community. Any estimate of the market value of a property in this area must allow for the sociological factor. This factor is more than just a locational factor. It will have to include the element of social preference in the demand for such property, conditioned by the social development of the neighbourhood as well as the urban municipality of which it is a part.

Perhaps one solution is to create a "Town House Modifier" which can be applied to the RCN and the land value and which would give an estimate of market value that would lie within 10% of the actual value.

Since market value is, in this case, the result of complex and perhaps amorphous determinants which influence both demand and supply, a further solution would be to resort to a more sophisticated approach such as the multiple regression technique. A multiple regression, which would include a variable to account for the socio-economic influences, can be run on available sales data to arrive at estimates of market value of similar properties which have not been sold. Other refinements of the technique can be employed to improve on the reliability of the estimates. Collinearity between this variable and other independent variables will have to be removed, for example. Moreover, a separate regression equation should be run for each neighbourhood.

Whatever the technique used, the importance of the modernized town house (whether by the amateur or the professional) is becoming increasingly evident, and, as has been shown, it poses a unique problem in view of existing mass appraisal techniques. □



## Major Provisions of The Municipal Elections Act

**T**he *Municipal Elections Act*, which was passed in the Ontario Legislature in June, consolidates all the provisions and procedures for the conduct of municipal and school board elections that had previously been provided in *The Municipal Act*, *The Voters' Lists Act*, *The Municipal Franchise Extension Act* and other Acts. Some of the major provisions are as follows:

The preliminary list of electors is to be based on information obtained in an enumeration to be carried out by the Assessment Division during the five weeks following Labour Day. Revision of that list will now be made by the clerk and not by the County Judge, as was previously done.

The Act reduces the importance of the property franchise such that all residents of a municipality, whether or not they are owners or tenants of property and their spouses, may vote if they meet the age and citizenship requirements. Previously, except where a municipality has passed a bylaw adopting *The Municipal Franchise Extension Act*, only owners and tenants and their spouses, farmers' daughters, farmers' sons, and sisters of unmarried or widowed farmers were eligible to vote.

However, non-resident owners (i.e. those whose "true, fixed permanent home" is elsewhere than in that municipality) and tenants and their spouses are entitled to vote. The vote is still restricted on money bylaws to owners, and tenants with leases of over twenty-one years.

All electors, whether or not they are owners, tenants or spouses thereof, may now vote in school board elections. An elector may now vote only once per municipality. Previously, a person could cast more than one ballot per municipality if he owned or tenanted property in more than one ward, except when voting for mayor, reeve or deputy reeve.

In municipalities with populations of over 5000, every resident elector must receive notification by mail of the location of his polling place.

A further significant feature of the Act is the provision for a uniform two-year term of office for municipal council and school boards across the province. ☐

# LEGISLATIVE IMPLICATIONS

## Aspects

## Interviews:

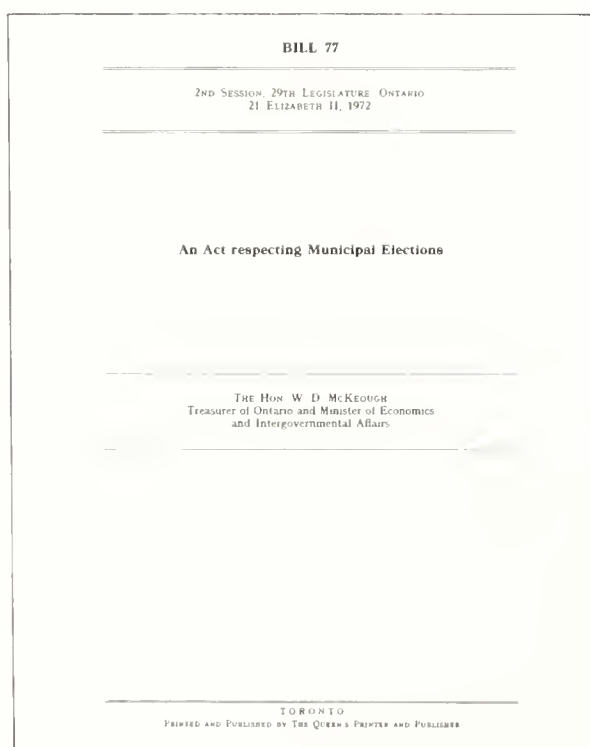
### Mr. Arthur Meen



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Mr. Meen was appointed Parliamentary Assistant to the Minister of Finance and Intergovernmental Affairs on March 1st, 1972. A lawyer by profession, he was elected to the Ontario Legislature in 1967 and re-elected in 1971. He has sat on numerous committees in the House, including the Select Committee on Taxation. As Parliamentary Assistant, he was responsible for the progress of *The Municipal Elections Act* in the House. (Ed.)

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**Aspects:** *What are your position and responsibilities with respect to the current municipal elections legislation?*

**Mr. Meen:** *As Parliamentary Assistant to the Honourable Mr. W. Darcy McKeough, I took responsibility for the municipal elections legislation after it had gone through first reading in the House. The Bill was introduced by the Minister and from there on it has been under my supervision; that is to say, in second reading, in the Standing Committee of Administration of Justice, back before the House and on for third reading.*

**Aspects:** *What were the reasons behind the decision to revise The Municipal Act and to introduce the new Municipal Elections Act?*

**Mr. Meen:** *There were quite a number of them. First, various committees were formed to look into our election laws and they found that there were many things that required change, including standardization of procedures, of the election day, of the term of office, and of qualifications of electors, among others. Second, it was difficult to weed out the various provisions that applied to elections from the very large and numerous sections of The Municipal Act where those provisions were originally found.*



## ... the standardization of municipal elections to one day across the province aims at higher voter turnouts and office term consistency ...

**Aspects:** *Who comprised these committees?*

**Mr. Meen:** *First, there was a committee appointed by the Minister composed of a number of clerks and other senior officers from municipalities around Ontario, chaired by Mr. F. A. Braybrook from the then Department of Municipal Affairs. This Committee submitted a Report in January, 1970. Following that, the Select Committee on Election Laws, made up of members of the Legislature representing all three parties, dealt with that Report, heard submissions, made tours around the province, went elsewhere to see what other jurisdictions did, and eventually came up with what is known as The Fourth Report of the Select Committee on Election Laws out of which came this Bill.*

**Aspects:** *To what extent does The Municipal Elections Act reflect the recommendations of The Fourth Report of the Select Committee on Election Laws?*

**Mr. Meen:** *Very closely. The Select Committee was appointed to deal with all election laws, not just municipal election laws. In 1969 they made their first Report out of which came amendments to the provincial Elections Act. Subsequently, after examining municipal election procedures, they came up with recommendations which provided the basis for the new Municipal Elections Act. One of the terms of reference which we have tried to follow in setting out The Municipal Elections Act was to standardize procedures and techniques and approaches to municipal election day with those of the provincial Act as far as possible.*

**Aspects:** *What do you consider to be the most important overall change in this legislation?*

**Mr. Meen:** *The one feature that has caused the greatest concern and the one which is, I think, the most significant of all the items in the Bill is the standardization of elections to one day across the province. With everyone going to the polls at the same time, the papers will be full of stories about election meetings and, whether they concern one's own municipality or not, reading about them will engender enthusiasm in municipal elections. Hopefully this will result in a higher turnout at the polls of better-informed voters.*

*In addition, with one voting day people will know when they must vote regardless of where their property is located. They will have the same advance poll date too. They will be able to vote early, probably in the clerk's office in*

*the region in which their cottage or farm is located. We think that there is a lot to be gained from establishing one date for everybody.*

*This provision for one voting day involves another provision to make all terms consistent. In this case we have settled on a period of two years, although many municipalities prefer a one year term and quite a number, such as Metropolitan Toronto and Ottawa, have been lobbying for a continuation of their three year terms.*

**Aspects:** *Will a special provision be made for those governments who wish to have a three year term?*

**Mr. Meen:** *No. We think that these larger local governments have a strong influence on the level of interest shown by the populace outside their areas, perhaps more than they realize, through the impact of their press and their media generally. The publicity given to municipal elections and the enthusiasm generated in these areas can contribute to a much higher voter turnout on election day across the province. So, in the long run, there is far more to be gained by establishing a uniform term, whether it be one, two or three years. Someday, when Ontario is covered by a regional structure of government perhaps not unlike the regional structure we see here in Metro and Waterloo and elsewhere, we might take a look at the picture and decide whether there is some merit in providing all jurisdictions with a three year term.*

**Aspects:** *Formerly, the municipal franchise was restricted to owners, tenants and spouses and excluded roomers, boarders and children of voting age (unless there was a bylaw passed under The Municipal Franchise Extension Act). What, in your view, are the advantages of extending the franchise to these people?*

**Mr. Meen:** *Many municipalities have already implemented The Municipal Franchise Extension Act. We are simply negating the need for that Act by adopting its terms right into this Bill. We think that everyone, whether he is a registered landowner or a rent payer, is in some way contributing to the taxes that are payable to the municipality for services rendered. It is specious to suggest that the only people who should have the right to vote are those who actually pay taxes to the municipality by cheque. We think that everyone, including the person with the short term lease, should be entitled to a vote.*

# THE MUNICIPAL ELECTIONS ACT

**Aspects:** *Do you think that the situation that exists at present with respect to money bylaws, where only property owners are allowed to vote, will change in the future?*

**Mr. Meen:** *In money bylaws, owners and tenants with long term leases have a vote. Frequently the OMB dispenses with the requirement for ratification of the money bylaw by electors for a number of reasons. But if the vote is held, it is a matter of significance to the electors. We are reluctant to extend the vote to transient people who might not take up residence in that municipality long enough to help pay off the debentures. We feel that by differentiating in this respect, we are recognizing the fact that money bylaws are of major significance to the person who owns real estate.*

**Aspects:** *The provisions of this Act have important implications for the Assessment Division. Could you describe them?*

**Mr. Meen:** *I was able to convince the Assessment Division last March, when it was still part of the Department of Municipal Affairs, that we could do an enumeration at a time of year when the results would be news rather than history. Under the previous arrangement, the Division conducted an enumeration over a period of months. This was clearly not going to be adequate for an accurate Voters' List. The Assessment Division has been convinced now that a fall enumeration is feasible and they are going to do it. This enumeration will be carried out during a five week period beginning on the Tuesday following Labour Day. It will be a blitz to end them all.*

*While this year this programme is costing some additional money, in subsequent years the cost will be no more than if the enumeration were spread over the entire year. The Assessment Division will supply the clerks with a computer printout of a preliminary Voters' List by the tenth of October following the enumeration. With this, we hope that the Voters' List will be more accurate and more complete. Also the Division will have more up-to-date information for assessment purposes than they have ever had before.*

**Aspects:** *There has been some debate in the Legislature over the question of whether landed immigrants should be eligible to vote in municipal elections as British subjects are. On a long-range basis, do you anticipate a change in this direction?*

**Mr. Meen:** *I really haven't tried to think it out on a long-range basis. Presently, if we were to remove the British*

*subject qualification, we would disenfranchise several thousand voters. On the other hand, my own personal sentiment is that we should not extend the vote to landed immigrants. We think that these persons should reside in this country for a period of time in order to get to know what living here is all about before we extend the vote to them.*

**Aspects:** *Formerly, electors could vote in each ward in which they were owners or tenants of property. The new Act restricts the franchise to one vote per municipality where property is owned or tenanted. Why was this change adopted?*

**Mr. Meen:** *This change resulted primarily from problems encountered by the Assessment Division, which found it difficult to create an accurate printout for a Voters' List which would not have duplication of names within certain wards. In the case of a non-resident elector, the Voters' List could show his name more than once in a ward where there were different polling subdivisions. The Assessment Division demonstrated quite dramatically that it would have been impossible to delete all those duplicate names from the list because the person was entitled to vote in each ward in which he owned or was a tenant of real estate. We had to make a practical decision, even though philosophically I disagreed with the change, to eliminate the right of an elector to vote in more than one ward in a municipality. There is one argument in favour of this step which I use as a sop to my conscience and that is: were it not for the fact that the municipality was divided into wards, he would only have had only one vote.*

**Aspects:** *Do you foresee any difficulty in implementing the legislation?*

**Mr. Meen:** *I think we have a pretty good Act but, to be pragmatic, I suppose it isn't perfect. Naturally, we will encounter problems through the summer and the fall, and very probably we will not have the answers until we have been through a complete run. To counteract potential problems, we intend to give summer sessions to the clerks in order to brief them on the Act and to acquaint them with all its provisions. These seminars will also make the clerks aware of their own responsibilities throughout the conduct of the elections as they are legislated under the Act. I understand the Assessment Division plans to hold similar briefings for its staff. If we all accept our responsibilities and meet our commitments, this programme should be a success. □*



## *Administrative Implications*

# *ENUMERATION FALL '72*

... shortened enumeration period  
enhances quality of voter and  
taxation information ...

Arnold Bock  
Assessment Division

Everyone is aware by now that *The Municipal Elections Act* contains several very significant changes which affect the operational procedures of the Assessment Division. There is no question that the enumeration programme is as important as any other single part of the municipal election process and as a result the Assessment Division has been involved in the formulation of the legislation since the beginning of the year.

### DEVELOPMENT OF THE LEGISLATION

Prior to 1972, considerable research had been conducted by various municipal and provincial groups interested in modernizing and streamlining election procedures. With the advent of divisional boards of education several years ago, it became apparent that the dates and procedures relating to municipal and school board elections were incompatible. Although many of the conflicts and duplications were eventually resolved, attention had focused on the inadequacies of the existing legislation. As a result, the Clerks' Advisory Committee of the Association of Clerks and Treasurers of Ontario, along with the City of Toronto Election Committee, undertook to review municipal election procedures.

In order to co-ordinate and evaluate these efforts and to ensure that a cross-section of municipal knowledge and experience was represented, the Honourable W. Darcy McKeough, as Minister of Municipal Affairs in August of 1968, created the Municipal Elections Committee. This group was made up of elected and appointed municipal officials representing the various municipal associations and was chaired by Mr. F. A. Braybrook of the Department of Municipal Affairs. Their recommendations were submitted in January of 1971.

Coincident with and subsequent to the deliberations of the Municipal Elections Committee, the Select Committee

on Election Laws, representing all three parties in the Legislative Assembly, reviewed the terms and provisions of the election laws, related Acts and regulations, and the recommendations of the Municipal Elections Committee. Their proposals were made public in the *Fourth Report of the Select Committee on Election Laws* in April, 1971.

The recommendations of these committees are the basis of *The Municipal Elections Act* passed in June of this year. Several of the main recommendations of the committees were similar and are reflected in the legislation. Among these is the broadening of the franchise to make residence in the municipality the primary qualification. In addition, there was unanimous agreement that an enumeration be conducted as close to the election as possible for the purpose of preparing the Voters' List.

### CHANGES

The most significant change for the Assessment Division is the move from a spring to a fall enumeration. The previous method of collecting statistical data from January to June resulted in grossly outdated information for elections in December and for taxation in the subsequent year. Since July and August are the months in which most persons change their place of residence, virtually everyone concerned favoured a fall enumeration. This feature will be the most important factor in improving the quality of the data collected.

Coupled with the fall enumeration is the requirement that the time period allotted to this procedure be substantially reduced. Those assessment regions who returned the assessment roll by ward previously spent from January to June on enumeration, while other regions took almost two months. We now have a five-week rather than a five-month enumeration.

## ...procedural and legislative changes streamline school support certification...the assessment roll becomes a purely valuation document...

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Actually, office procedures dictate that most of the field work be completed within the first two weeks of this five-week period in order that keypunching and processing can be completed by the end of the fifth week. It is apparent that much of the keypunching will have to be done on a contract basis, since the regional offices will be incapable of handling the volume during this peak period.

As a consequence of the decision to carry out the programme in two weeks, approximately 8000 casuals will be hired to begin enumerating on September 5th. Needless to say, the supervisory and administrative structure needed to cope with a group of this size must be substantially more sophisticated than that which existed in the past.

The design and content have been revised and simplified and hence the task of instruction will be substantially easier. However, the hiring, documentation and training of such a large group of casual help will keep the offices busy during the month of August. Indeed, visitors may mistake it as an office of Statistics Canada rather than the Assessment Division.

### LEGISLATIVE CHANGES TO THE ASSESSMENT ACT

In order to accommodate the September enumeration, several amendments were made to *The Assessment Act*. Personal statistical data gathered by the enumerators for the assessment roll could not be processed until well after the dates set for the preparation and return of the roll. The only reasonable alternative, therefore, was to make the roll a valuation document containing only the names of persons liable for assessment and taxation.

In particular, section 17 which describes the content of the assessment roll had to be amended to exclude references to statistical data such as occupation, year of birth, marital status, citizenship, religion, electoral status and school support, all of which are personal rather than property information.

Complementary to this is a redefinition of "tenant" for the purposes of the assessment roll. Henceforth, only the names of owners, persons liable for business assessment and tenants of Crown land will appear on the roll, along with the value and description of each assessable unit.

### THE MUNICIPAL ACT

Since determination of school support of all persons able to direct education taxes is the other primary reason for the enumeration, it became necessary to revise the statutory procedures relating to the revision and certification of school support. Section 23 of *The Assessment Act* was amended to read that the assessment commissioner shall

provide a list each year to the municipal clerk and the secretaries of the respective school boards by October 10th. This list will be the result of an annual enumeration and will contain the names and school support of all persons who are eligible to direct education taxes.

Under an amended section 516 of *The Municipal Act*, the municipal clerk will be authorized to revise and certify the list by or before November 10th. Because the list will be based on the recent enumeration, it is expected that the number of changes will be insignificant. In election years, the timing of the revision process will be coincident with the revision of the Voters' List and hence, an addition or change to the school support list will cause a complementary change to the Voters' List for electors.

If, for any reason, the municipal clerk does not feel that a change is warranted when an official application is made, the school supporter may appeal within fourteen days to the regional registrar of the Assessment Review Court. However, the clerk's decision as it relates to the Voters' List is final.

School support, as certified by the clerk and amended by a decision of the Assessment Review Court, will then be incorporated into the tax collector's roll to be used in the levying of taxes. Since the time lapse between certification and actual taxation will be relatively short, the municipality will have a current document on which to levy taxes. In addition, school boards will not be frustrated by data which is grossly out of date.

Last, but not least important, is the fact that the bulk of routine changes regarding school support will no longer require processing by the Assessment Review Court. Individuals will, for the most part, be able to effect a change with a minimum of effort and the Court will be freed to devote more time to valuation matters.

### CONCLUSION

It is not difficult to recognize that the introduction of this single piece of legislation—*The Municipal Elections Act*—has had many far-reaching effects. Companion amendments to *The Assessment Act* and *The Municipal Act* have resulted in changes relating to the enumeration process, content of the assessment roll and certification of school support for taxation purposes. An examination of these changes will show that all are beneficial in that they rationalize procedures to better serve the public. There is little doubt, however, that administrative problems will be encountered in this transition year, but close co-operation between assessment and municipal officials should overcome most problems. □



## *Administrative Implications*

Aspects interviewed the Assessment Services Managers of two regions to obtain their views on the new enumeration programme and to describe the administrative changes that are involved.

# THE ASSESSMENT DIVISION

## *Aspects Interviews:*

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### MISS HELEN CRIMMINS

Miss Helen Crimmins has been Assessment Services Manager in the Dufferin Wellington Regional Office since 1970. Prior to that, she worked in the City of Guelph Assessment Department as a supervisor of clerical operations and data processing.

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### MR. DON CLAYTON

Don Clayton began work in assessment for the City of Kingston in 1953. In 1967 he took a position in the Renfrew County Assessment Office and was acting Commissioner there for a time. In 1968, he became county assessor for the Lennox-Addington Office and later in the year he became Commissioner there. Since 1970 he has been Assessment Services Manager in the Frontenac-Lennox-Addington Office.

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Both regional offices are responsible for a large geographic territory with numerous small municipalities, sparsely populated areas and sizable portions of cottage country. In addition, each has one large urban center with a population of slightly over 55,000. Hence to conduct an enumeration programme requires delegation of functions to rural enumerators who know their areas well and who can perform their duties with little supervision and control after their initial training session.

### STAFFING AND WORK LOAD

Aspects asked Miss Crimmins and Mr. Clayton how their staffing requirements and workload will change to accommodate the new programme. Mr. Clayton feels that he will have to hire three hundred casuals (compared to a previous figure of one hundred and thirty) in order to complete the enumeration within the allotted two-week field period. In the densely populated areas such as Kingston, an enumerator will be able to complete two or three polling subdivisions. In the rural areas, however, where there are great distances between properties, an enumerator will find that one polling subdivision will probably require the whole two weeks to complete. He plans to hire five or six supervisors to control the progress of the programme and maintain contact with the enumerators.

Miss Crimmins, who had previously hired ninety casuals to complete the work, finds that she will have to employ between two hundred and two hundred and fifty to ensure that her territory is covered. While the previous enumera-

tions were conducted as part of normal office operations and did not require a large amount of special preparation, the new programme demands a period of concentrated preparation and study. Supervisors will play a large part in the training of enumerators and will act as field deputies to control the operation.

### MERITS OF FALL ENUMERATION

Aspects proceeded to obtain their views on the relative advantages and disadvantages of the new system.

Miss Crimmins reported that one advantage for her is that the programme will be conducted in September when weather conditions are most reliable. Spring floods and late snows often delayed plans for enumeration in very rural areas.

Both Miss Crimmins and Mr. Clayton believe that since the M.E.N. is a simplification of the Data Revision Sheet and since there is less data content, training sessions will be easier to conduct and the work will be grasped more readily by the enumerators. Hence there will be no need for two day training sessions; one day will be sufficient.

In addition, the provision for the M.E.N.'s to be mailed out to all non-resident owners will considerably reduce the workload in cottage areas. Both Managers claim that they will make use of their assessors in rural areas, where distances between properties would discourage and delay enumerators, and in commercial areas where they can ensure that the correct business assessment is applied to each property.

Finally, and most significant, a late enumeration will provide more accurate information for the preliminary Voters' List. Subsequently, Assessment Notices and Tax Bills will also be more accurate.

Mr. Clayton pointed out that one disadvantage to the programme, aside from the problem of hiring an extra one hundred and seventy enumerators, will be that classes for the training sessions will be too large. While previously he found that twenty persons per class created the most suitable teaching conditions, he is now forced to expand his classes to a minimum of thirty.

A further disadvantage for both Managers is that university registration occurs during the time of the fall enumeration. Since both Guelph and Kingston have universities they will experience a large influx of students who will be moving into accommodations at that time. Hence it will be difficult to procure the name of all the students and to accurately establish their place of residence.

Although Mr. Clayton and Miss Crimmins feel that preparation for this year's programme will be extremely taxing, they agree that in the long run the quality of enumeration will improve. □

## THE MUNICIPAL ROLE

### *Aspects* *Interviews:*

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#### MR. J. G. KILLINS

Mr. J. G. Killins was appointed Clerk-Treasurer of the Township of South Grimsby in January, 1963. In 1970, his jurisdiction grew as a result of the amalgamation of South Grimsby, Caister, and Gainsborough into the Township of West Lincoln in the Regional Municipality of Niagara.

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#### MR. R. W. PRITCHARD

Mr. R. W. Pritchard was hired by the municipality of Kitchener in 1965 as the assistant to the Clerk. In July, 1966, he was appointed Deputy Clerk and in October, 1967, Clerk, which position he presently holds. He was a member of the Municipal Elections Committee of the Association of Municipal Clerks and Treasurers of Ontario, which reviewed the recommendations for reforms in the Act.

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#### MR. E. A. SIMPSON

Mr. E. A. Simpson was appointed Clerk of the City of Hamilton in 1964, but had been obtaining experience in this function since 1946 when he was discharged from the army and was employed in the Clerk's office. He is Chairman of the Clerk's Advisory Committee of the Association of Municipal Clerks and Treasurers.

In an effort to obtain responses to *The Municipal Elections Act* from people at all levels of involvement in municipal elections, *Aspects* interviewed three Clerks who represent municipalities of various sizes and complexities. We compiled their answers to our questions and present them below.

#### THE VOTERS' LIST

As an introductory question, *Aspects* asked how the Clerk's responsibilities will alter as a result of the new legislation. The response was uniform: the Clerk's function will not be substantially altered. While previously, he was involved with the local assessment office in preparing a preliminary Voters' List, that responsibility will now fall primarily to assessment officials. However, the Clerk will

finalize that list, and post individual lists in every polling subdivision. Also, in the past the city council was the body responsible for approving the appointment of election workers and the location of polling booths; now the Clerk will not have to seek council's approval on these matters.

One major change in the Clerk's role is that he will be responsible for handling all appeals to the Voters' List. Prior to this Bill, appeals were handled by the County Court Judge, and his decision was final. Now the Clerk's decision will be final. Mr. Pritchard commented, and Mr. Killins agreed, that this change "should be instrumental in providing a smoother administrative operation in the Clerks' offices. In the past the procedure was cumbersome because the Voters' List would not be altered (as a result of an appeal) until the Judge authorized the change. Under the revised legislation the Clerk will be allowed to make the



changes to the Voters' List as he or his delegate approves them.

"In addition, previously all appeals on matters related to the assessment roll, whether school support, valuation or personal data (whether or not they ultimately affected the right of the individual to vote), would be heard by the Assessment Review Court. In some cases, the Assessment Review Court would not hear such appeals until after the municipal election took place. Hence, unless an individual had appealed his assessment on school support as well as the Voters' List, that information would have appeared incorrectly on the Voters' List."

## STANDARD ELECTION DAY INCREASES PARTICIPATION

*Aspects* then proceeded to ask the Clerks what effect they thought the Act would have on municipal elections generally. All of them expressed the hope that, with the establishment of a standard election day throughout the province, the provision for proxy voting and the provision for uniformity in the advance polling dates, the number of voters would greatly increase. The media will encourage a feeling of general concern and participation among all areas of the province.

## TERM OF MUNICIPAL OFFICE

The next question was prompted by debate in the Legislature concerning the establishment of a two year term of municipal office across the province. *Aspects* asked the Clerks for their views on the matter.

Although the City of Hamilton has provided for a two year term of office for about twenty years, certain members of council have, on occasion, opted for an extension, but when put to a vote the request has been defeated. Although Mr. Simpson appears to be satisfied with the present term, he expressed the opinion that the three year term would allow more time for the carrying out of policies. He added that the costs of running elections, both from the standpoint of the municipality and that of the candidates, were becoming increasingly difficult to meet.

Mr. Pritchard explained that several years ago Kitchener had changed its term of office from one to two years. "Since the municipal structure is becoming more complex, I feel that a junior alderman must devote six to eight months toward learning his responsibilities and acquiring background information on municipal operations. Accordingly, I would reject a one year term, at least in the larger urban centers and promote the idea of a two year term." On the question of a three year term, Mr. Pritchard claimed that difficulties could arise if a weak council were elected and critical decisions had to be made.

Mr. Killins, on the other hand, expressed the view that a three year term of office was more practical for a regional government. "With the advent of regional government here, three municipalities were amalgamated, and it took a year to get things running smoothly. By our second year, we were more organized and more prepared to carry out policies. If the second year is the election year, interest by council members will turn from council matters to campaigns."

Another point that raised comment in the Legislature was the determination of the first Monday in December as the date for municipal elections. *Aspects* asked the three Clerks whether they considered this date to be satisfactory.

Mr. Simpson claimed that he would prefer to conduct the

election some time in the fall and noted that federal and provincial elections are never held during the winter months. "I would personally like to see the elections in October and the new council take office on November 1st because at that time council is usually either finishing off their yearly projects or in the middle of long term projects. If new members began their term of office then, there would be less disruption. They would have a couple of months to get to know their way around. They could work on budgets in January with more knowledge of what goes on in City Hall. Also in December the daylight hours are shortest and some people do not like to go out after dark; the weather conditions are unreliable; the excitement of Christmas dominates the atmosphere, the Grey Cup Game has just occurred and people are tired. Hence interest in an election is reduced considerably."

Mr. Killins raised the point that a December election is the most practical for the Assessment Division. In order to prepare an accurate Voters' List, enumeration must be conducted during a period when the fewest number of people are changing their place of residence. If the Division were to conduct an enumeration during the summer months for a fall election, the Voters' List would be less accurate.

Mr. Pritchard commented on the fact that in the Kitchener area, there has been a very poor turnout on voting day (12%–17%). He feels that the inclement December weather is a factor affecting the poor turnout and suggested, as did Mr. Simpson, that an October date would encourage more electors to vote.

## THE SCOPE OF ELECTION REFORM

As a final question, *Aspects* asked whether *The Municipal Elections Act* provided the kind of election reform the three Clerks were anticipating. Mr. Pritchard replied that although he approved of extending the franchise to all residents of a municipality who meet age and citizenship requirements, he did not feel that non-resident owners and their spouses should retain the vote.

In addition, he personally disagreed with the provision for proxy voting. Although he felt that the principle is sound, i.e. to allow individuals who cannot vote on election day and the advance polling days, in practice it allows one individual to vote more than once and, in some cases, numerous times. There is no guarantee that the individual appointed to submit a proxy vote will in fact vote in the manner in which he has promised.

Thirdly, Mr. Pritchard objected to the system of advance polls established by the Bill. "While I agree that all municipalities should conduct advance polls, I do not feel that these polls should be held on two days. There are many municipalities in Ontario with very small populations and yet two advance polls are required, each of which must be open for eight hours. It certainly seems unnecessary in many cases. The decision to conduct two such polls should be left at the local level."

Mr. Killins replied that he was satisfied with the reforms set out in the Bill but does anticipate practical difficulties when the elections approach. "Until we put the policy into effect, we won't be able to see where the problems arise."

Mr. Simpson, too, is satisfied with the majority of the changes. As Chairman of the Clerks' Advisory Committee, one of whose prime projects was to bring about election reform, he is pleased that the Bill has incorporated many of that Committee's recommendations. □

# *The Training of Assessors – Los Angeles County, California*

Doris K. Seward  
Los Angeles Assessor's Department

Training is a specialized and practical form of education. Technically speaking, training may be defined as a systematic process designed to change the behavior of the employee so as to channel on-the-job activities towards achievement of organizational goals. Training should produce the skills needed for efficient and productive work, the knowledge needed for understanding of functions and interrelationships between the organization and its environment, and the attitudes which bring about commitment to job, organization, and public service. The terms "training" and "development" are not truly synonymous but connote the learning of specific skills, knowledge, and attitudes as compared with learning of a broad or generalized nature which may enable employees to fulfill potential abilities.

## THE SYSTEMS APPROACH TO TRAINING AND DEVELOPMENT

A trainer, whether he or she is operating within the framework of a formalized training unit or informally as the assessor who assumes personal responsibility for staff training and development, can maximize results through application of a systems approach to training and development. Basic steps to be followed are described below.

**Identification of Needs.** This step requires consideration of goals and functions of the organization and performance requirements of employees for whom training is to be designed. Identification of training and development needs is a critical phase of the systems approach because activities

not based on valid needs will not contribute to the organization or to the individual. They will simply be "training for training's sake" and, as such, will waste time, effort, and money.

**Establishment of Objectives.** A training objective is a precise, clear statement of performance expected of the learner upon completion of the learning experience (also known as the training activity). Emphasis is placed on the learner. Decisions about training content and instructional tactics can come only after instructional objectives have been defined in terms of measurable behavior. Along with establishment of objectives, the trainer should determine the means by which post-training will be measured. This may be a written or performance test, completion of a project, or evaluation of job performance after training as compared with performance prior to training.

**Selection and Sequencing of Course Content.** Objectives represent the desired end results of a training course or programme; the content of that programme consists of conceptual and pragmatic information necessary to achieve those results. Content must be ordered according to psychological bases for effective learning. The learner moves from the simple to the complex, from the familiar to the unknown, and from the concrete to the abstract. During this phase of the systems approach, a course outline is developed to describe content to be included.

**Selection of Instructional Strategy.** As content is developed, a strategy of instruction is simultaneously planned,



based primarily on objectives to be accomplished. A basic guideline for selection of instructional strategy is that learning activities must be learner-centered and must demand learner activity. Strategy involves basic approaches or methods such as lectures, demonstrations or conferences. It also involves techniques such as use of audio-visual aids which complement methods, systems of organizing instructors and learners, and use of such mediating devices as learner response systems, computer-based instruction, and closed-circuit television.

**Production of Instructional Materials.** Once objectives or desired outcomes of the training course or programme have been stated, criterion measures have been prepared to measure realization of objectives, content has been designed, and instructional strategy has been planned, the next step is to produce the documents and materials which collate concepts and methodology into a package. Lesson plans, handout materials, discussion guidelines, programmed instruction modules, and audio-visual aids are recommended components of this package. The lesson plan is the blueprint for instruction; it is not only evidence that planning has been done, but it is a vital tool for effective presentation and learning. The lesson plan should include objectives of the lesson (or session), a content outline, key points to be discussed within that outline, training equipment and aids to be used, and references from which content is drawn.

**Implementation of Instructional Plans.** This is the "pay-off" point of the system; it is at this point that analytical and design efforts become a worthwhile reality. It is also at this point in particular that the effectiveness of the instructor as a communicator of information and as a manager of learning is vital to the success of the training activity. During the implementation step, instruction is continually evaluated to determine whether instructional strategy is effective and whether content was properly developed to meet objectives and, in turn, to satisfy the training need.

**Evaluation of Instruction.** In addition to this "instant feedback", more formal types of evaluation are required at the close of the training activity. Primarily, actual learning results must be compared with criteria designed to measure achievement of training objectives. The most complex type of evaluation involves follow-up of the learner on the job to analyze transfer of learning from the classroom to the working situation. Observation, measurement of work, results, and post-training internal audits are possible means by which evaluation can be made.

**Feedback.** From on-going and post-activity evaluation, information is fed back into the training system to require revision of content, modification of strategy, re-statement of objectives, and to generate new training and development needs. Thus, training and development becomes an on-going process continually expanding to meet new challenges of the assessor's operation.

## TRAINING AND DEVELOPMENT PROGRAMMES OF L.A. COUNTY

The systems approach has been utilized within the Los Angeles County Assessor's Department since 1967 to develop an integrated training and development programme applicable to entry-level appraisers, State-certificated ap-

praisers, non-appraisal or support personnel, supervisors, and managers. The overall purposes of this programme are to qualify individual employees for competency in present and future job assignments and, simultaneously, to achieve organizational goals through maximization of human resources.

**The Appraiser Trainee Programme.** The Los Angeles County Assessor's Department conducts a one-year real property appraiser trainee programme through which college graduates with no prior appraisal experience are provided with a mixture of classroom theory and on-the-job experience. Specific objectives of the trainee programme are: (1) The appraiser will be able to apply appraisal theory and assessment procedures to actual field situations; (2) The appraiser will meet performance standards established for the journeyman classification; (3) The appraiser will satisfy all requirements for permanent certification by the California State Board of Equalization.

On-the-job training is an essential feature of this programme. Classroom sessions prepare the trainee for field assignments by providing a basic understanding of the appraisal process and the legal and procedural framework of assessment practices. In classroom sessions lecture is minimized; group participation, discussion, case studies, and problem solution are maximized. Field trips are utilized to demonstrate application of concepts presented in the classroom.

During an initial six-week orientation period trainees learn legal and theoretical bases of appraisal and fundamental techniques of the cost, market, and income approaches to valuation. They learn to use appraisal handbooks and cost manuals and to work with property data records. Each step in the appraisal process is practiced during supervised field trips prior to completion by each trainee of a narrative appraisal report.

After completion of this initial period, trainees are assigned to area offices where they learn production phases of property assessment through planned progressive experiences. During this seventeen-week period, trainees return to the classroom periodically to study in depth the income approach to value, real estate finance, and residential re-appraisal.

The trainee then spends the final six months of the training programme in a regional assignment where further experience in production assignments, again on a progressive basis, is gained. Classroom sessions emphasize Departmental functions and organization and public relations. At the end of this year, the trainee must pass a final examination in order to be promoted to journeyman status and to earn a State appraiser's certificate.

Similar entry-level programmes, one year in duration, are provided for personal property appraisers and auditor-appraisers.

**Appraisal In-Service Training.** To further professional skills of appraisers in Los Angeles County, as well as to meet California State requirements, each permanently certificated appraiser receives at least twenty-four hours of in-service training annually. Areas of emphasis each year are determined through surveying training needs, interviewing division heads, and analyzing results of internal assessment practices audits. Course outlines must be approved by the divisions for whom the course is designed and by the State Board of Equalization.

Examples of areas which have been covered in sessions for real property appraisers are The Reappraisal Process, Appraisal of Residential Income Properties, Appraisal of Complex Commercial and Industrial Properties, Collection, Organization, and Presentation of Evidence for Equalization or Appeals Boards, Land Valuation, and Computation of Cash Equivalent. Personal property appraisers have studied Appraisal Theory as Related to Personal Property Assessments, Retail Cost Method, Appraisal of Aircraft and Airlines, Appraisal of Boats and Marine Equipment, and Auditing of Business Personal Property Assessments.

**Non-Appraisal Entry and In-Service Training.** All new, permanently assigned non-appraisal employees attend a six-hour orientation session covering Los Angeles County and Assessor's Department functions and organization, employee relations, public relations, and telephone techniques. Support personnel other than clerical have attended in-service sessions in Letter and Report Writing and Telephone Techniques. Clerical employees have learned Work Simplification, Introductory Computer Concepts, and Exemptions Procedures. Executive secretaries have attended annual institutes presented by the County's Secretarial Career Development Council.

**Supervisory and Management Development.** All first-line supervisors, appraisal and non-appraisal, are scheduled for a six-session conference series covering Basic Supervision and Training. Areas of interest are the supervisor's job, leadership, motivation, communication, job training, work distribution, methods improvement, delegation, and performance evaluation.

For middle managers, from the Principal Appraiser to the Chief Appraiser level, including non-appraisal division heads, seminars and workshops have been conducted either internally or by consultants on Successful Middle Management, Decision-Making, Performance Evaluation, Planning and Control, and Administrative Communication. Division heads also attend an annual management conference sponsored by the County's Management Subcouncil.

An executive development programme, stressing self-development of department managers and their assistants at

the top level of the organization, has been conducted over a period of years by the County Personnel Department.

**Supplemental Educational Activities.** The Assessor's Department participates in a tuition reimbursement programme monitored by the County Personnel Department. The general objective of this programme is to provide County management with additional tools to increase scientific, professional, technical, and managerial skills of employees to meet present and future needs. Through tuition reimbursement, appraisal and non-appraisal personnel may study in after-hours classes conducted by local colleges and universities. A substantial portion of the assessor's allocation of tuition reimbursement funds goes to employees seeking professional designations or certificates in specialized areas such as assessment administration, information management, systems and programme planning, and training and development.

In addition to college courses, a limited number of employees attend institutes and seminars conducted by professional organizations, such as the International Association of Assessing Officers, American Institute of Real Estate Appraisers, Society for Real Estate Appraisers, American Management Association, and Association for Systems Management.

## A PARTING WORD

As the professional requirements of appraisers and administrative personnel change and as management of the assessor's function becomes increasingly complex, the need for continuous training and development is omnipresent. A corollary need is for research to improve analysis of organizational and individual needs to enhance instructional methodology, and to evaluate short and long-range results of learning activities.

Much criticism of property tax administration might be alleviated if greater emphasis was placed on training and development. In this era of change, development cannot be limited to formal activities but must permeate the organization so that through its very way of life the assessment organization stimulates and reinforces continual learning. □



# Grants in Lieu of TAX

H. S. Cummings  
Ottawa-Carleton Office

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Mr. Cummings started his career as an assessor in 1945 when he went to work for Nepean Township. In 1950 he joined the City of Ottawa Assessment Department and became Deputy Commissioner in 1968. Presently he works on commercial and exempt properties in the Ottawa-Carleton Regional Office. [Ed.]

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This article is not intended as a fully developed treatise on this important subject; rather it contains this assessor's random thoughts, put together with some hoped for cohesion. Buried in it may be something that could be of help to some readers—particularly those involved in the assessment of exempt properties.

Increasing municipal costs have always concerned local councils, who are ever sensitive to the political impact of rising mill rates. To counteract them, they have pressed vigorously for either full taxable status on properties exempted by *The Assessment Act*, or substantial grants in lieu of tax on property of federal and provincial governments and their agencies. Understandably, the higher levels of government have been just as aware of costs as anyone else, and knowing that all government largesse must come from the taxpayer's pocket, have not given everything asked for. However, through legislation, a standardized approach to grants in lieu of tax has evolved in most areas. This is much more satisfactory than the older concept: "Take what is offered and say thank you". To illustrate the impact of this change, the City of Ottawa now receives from the Government of Canada a lump sum payment of approximately \$12,000,000 compared with \$300,000 in 1950.

## FEDERAL PROPERTY ASSESSMENT

Grants in lieu of tax on federal property are legislated by *The Municipal Grants Act*. This Act exempts many properties such as libraries, museums and park lands. Some justification for exemption can be found in the argument that such federally provided facilities are used to a greater degree by local citizens than by citizens of cities thousands of miles away; but this answer does not always satisfy local councils who are anxious to extend the tax base.

When assessing federal properties, it is absolutely essential to use a valuation approach similar to that used on taxable properties of like construction and location. The federal Finance Department has its own core of assessors who verify assessments placed on federal property and they will not accept values reached otherwise. Equal care must be exercised in establishing which properties or parts of properties are leased to other parties since grants in lieu are not paid on leased areas.

Embassy and chancellery properties of foreign governments that are occupied and used also pay grants in lieu where title rests with the country concerned. While not authorized by *The Municipal Grants Act*, such payments come under the authority of a federal Order in Council, number P.C. 1956-1646. The actual payment is made by the Department of Finance, after the Department of External Affairs has confirmed the use of the property, and the assessed value has been checked by Finance Department assessors. Such property is diplomatically immune from local laws and is no longer considered Canadian soil.

Federal government agencies usually have the power to pay grants in lieu of tax written into their respective formation legislation. However, individual policies come into play whenever this power is permissive rather than mandatory. For example, while both the Bank of Canada and Atomic Energy of Canada accept and pay both property and business tax grants, Central Mortgage and Housing Corporation and Canadian Broadcasting Corporation pay only on property. Here is an area where standardization could be affected by amendments to the various bills setting up federal agencies and commissions.

Federal government housing is found on many operations such as National Defence stations, Experimental Farms and Department of Transport installations. Here, the local municipality, by agreement with the federal government as authorized by *The Municipal Act*, may decide to accept a grant in lieu of tax instead of the tax normally levied against the tenant's taxable interest. Such a grant does away with the obvious collection difficulties experienced in this type of situation, but the amount received may be below the amount of the full tax. When such an agreement is in force, the entries in the roll are listed as exempt, and marked as eligible for grants. Since school boards are almost certainly involved with children from such housing, the correct school support of the tenant should be listed.

## PROVINCIAL PROPERTY ASSESSMENT

*The Provincial Municipal Tax Assistance Act* and *The Power Commission Act* are the most important of those Acts covering provincial grants in lieu of tax. Here again certain properties are exempt, although signs are appearing that many hitherto exempt properties will become eligible for taxation in the future. Already payments on provincial parks, based on \$5.00 per acre on the first 100 acres, and \$2.00 per acre on the balance are being paid. Similarly, the payment of grants on a student enrollment basis to municipalities having universities and community colleges within their boundaries indicates a desire to broaden the base of the grants structure.

There are certain differences in the valuation approach used for various types of provincial property and that of its agencies. Ontario Hydro lands are valued at the average value of lands in the vicinity with no assessment on towers, lines, transformers, substructures or easements. Ontario Hydro generating stations and buildings housing transformers are valued at a statutory \$8.00 per square foot for the inside floor area of the ground floor, factored by the latest equalization factor. On the other hand, provincial Department of Transportation property and Liquor Control Board property are valued in the same manner as taxable property of similar construction and location.

Another difference is found in the entry of tenants on the assessment roll. Ontario Hydro tenanted property is listed as exempt and eligible for grants, whereas properties such as Department of Transportation and Communications acquisitions, which have been subsequently leased, are taxable. Property of Ontario Housing Corporation is not eligible to pay grants in lieu until occupied, and then its tenanted parts are listed as exempt, but eligible to pay grants in lieu.

Grants in lieu of business tax are paid by Ontario Hydro on lands not leased, by the Provincial Savings Banks, and by the Liquor Control Board. The business assessments are computed at 60% of realty value on Ontario Hydro, 75% on Province of Ontario Savings Offices and 75% and 45%

(1972 Grant Purposes) on Liquor Control Board warehouses and retail stores respectively. The grant calculations are at full commercial rates for Ontario Hydro (which includes school rates), and at commercial general rates only (i.e. excluding school rates) for the others.

## MUNICIPAL PUBLIC UTILITIES

Public utilities and commissions are subject to payment of grants in lieu of tax on some of their properties together with the appropriate business tax. The most common are power commissions, transportation commissions, parking authorities, and municipally owned sewer and water systems. Section 35 of *The Assessment Act* is the authority for these particular grants.

In making assessments on public utilities, there is a standard exemption on works, structures, substructures, towers, lines, rails, and generally anything other than a building. In this connection, when assessing the local filtration plants, the City Solicitor for Ottawa advised that what seemed to be a building, in that it had walls and a roof covering and protecting the filter beds, was actually a structure and an integral part of the beds themselves and therefore not assessable. While you may not agree, you can see the need to carefully consider the various parts of a utility installation.

Incidentally, it strikes me as odd that section 3 begins by saying all real property is liable to assessment, subject to certain exemptions from taxation, which it then lists in detail. Then in section 35 (public utilities), and in section 38 (railroad properties), the Act specifies certain things are not liable to assessment. As a result, there is some doubt as to whether everything defined as land in section 1 should be valued and listed, taxable or not, or whether certain utility and railroad items need not be valued at all.

One thing common to all assessments liable to payment of grants in lieu of tax is the necessity to include these valuations in the assessment totals used for the apportionment of county or regional levies. This fact emphasizes the need to value this type of property in a careful and fair manner, which is in line with taxable property.

Another area which does not actually involve grants as such but is worth mentioning is that of exemptions brought about by Private Bill or local by-law, rather than by the exempting section of *The Assessment Act*. Section 305 of *The Municipal Act* imposes levies for hospital and welfare purposes on this type of property, despite the exempting legislation. In this day of rising hospital and welfare costs, the revenue collected for these purposes in larger centers can reach respectable proportions, and any source of revenue is welcome.

There are undoubtedly other areas not covered in this short description. It is hoped that something of interest and perhaps use may be gleaned from it, and if so some useful purpose has been served. □



# Appeals Under The Assessment Act — Some Suggested Changes

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Mr. Nathan is presently a partner in a Toronto law firm. A graduate of Osgoode Hall in Toronto he served as a Law Clerk to the Chief Justice of the High Court of Ontario in 1965-66. He was awarded a Master of Laws from University College, London, England in 1967 and served on the committee to revise the legislation in *The Assessment Act, 1968-69*. [Ed.]

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I would like to deal with this topic by considering the following two questions:

1. Are three appeal levels necessary?
2. Are the appeal provisions fair to an appellant taxpayer?

## 1. ARE THREE APPEAL LEVELS NECESSARY?

As you are aware, under *The Assessment Act* (the Act), R.S.O. 1970, Chapter 32, there are three levels of appeal available to an appellant, namely, the Assessment Review Court (ARC), County Judge (Judge) and the Ontario Municipal Board (OMB), each by way of trial de novo.

As you are also aware, the function of appeal tribunals is to determine the appropriate assessment for a particular property. These tribunals cannot, strictly speaking, decide questions of law by reason of certain court decisions which have held that, constitutionally, questions of law could only be decided by courts of law presided over by judges appointed under section 96 of *The British North America Act*.<sup>1</sup>

Under section 66 of the Act, motions may be taken to a County Court Judge (not sitting as a County Judge under the Act), or a Supreme Court Judge for the determination of any question relating to an assessment.<sup>2</sup>

From the decision of the County Court Judge or Supreme Court Judge under section 66, an appeal lies to the Court of Appeal, so that theoretically an assessment matter may go through more than three levels before final determination. Several drawbacks to the present system become obvious from the foregoing. I shall attempt to deal with some of these and make some suggestions for improvement.

### (a) Are three trials de novo a waste of time?

Apart from those provisions of the Act which permit an appellant to appeal from a decision of the ARC directly to the OMB (see discussion below), the procedure may take an appellant first to the ARC, then to the County Judge, and then to the OMB.

My personal view is in accord with that expressed by His Honour Judge Clare in a recent decision, an extract of which appears in an article by James Lawson, Q.C., Chairman of the ARC, in *Aspects* No. 4, p. 11. I quote a portion of Judge Clare's judgment as follows:

"In no other branch of the law have I heard of three appeals each by way of trial de novo. *In my opinion such a procedure is a waste of time of the provincial assessors, a waste of the time of the Courts and entails a very high level of expense without providing any additional*

*protection, to the appellants.* The appellants themselves are put to unnecessary expense by being subjected to the possibility of three levels of appeal."

The italicized portion expresses succinctly a complaint often heard by assessors, namely that they are tied up in court for so much of their time that they cannot get on with their important job of assessment. As time goes on and market value assessment is implemented throughout the province, this will become more acute. Likewise, taxpayers must take time from their businesses on numerous occasions to attend hearings, where in many cases the tax savings are not substantial enough to justify the time and expense involved.

In my view, the appeal to the OMB should be based on evidence taken before the ARC (in direct appeals to the OMB) or the Judge, rather than by trial de novo. An appellant should have the right to have a reporter present to take down the evidence which can then be transcribed for use before the OMB.

### (b) Costs

There is always a material consideration in the prosecution of an appeal by a taxpayer. The June 1972 amendment to the Act has repealed sections 59 and 60 which had provided that costs in any proceeding before the ARC or the Judge should be paid in

such a manner as the ARC or the Judge considered proper, while limiting costs to the "costs of witnesses and procuring their attendance, and none other".

At the OMB level, section 96 of *The Ontario Municipal Board Act*, R.S.O. 1970, Chapter 323, provides that the OMB may make any order as to costs.

An appellant, therefore, at least at the ARC and Judge levels, may be furnished with a substantial bill from his solicitor for legal services rendered in representing him, without being able to recoup any of these against the unsuccessful party, as one can do in the civil courts.

It is of little comfort to an appellant if he is successful at the ARC and Judge levels, and the Assessment Division appeals to the OMB. As a matter of economics, if the amount in question is low, an appellant may not wish to take his case beyond the Judge level. However, if the case does involve a matter of principle which the Division may wish to have settled, it may appeal the case to the OMB to have the principle settled.

My suggestion is that the ARC and Judge should be able to award costs in a proper case where a successful party is represented by a solicitor. In cases in Small Claims Courts involving \$200 or more, the Court has the power to award a successful party represented by a solicitor counsel a fee of up to \$50.<sup>3</sup>

As costs are always discretionary, there would not have to be an order made against a taxpayer appellant where, although unsuccessful, he was justified in appealing.

### (c) Questions of Law

Numerous articles have been written criticizing the jurisdictional problems raised by section 96 of *The British North America Act*.<sup>4</sup>

In a recent decision,<sup>5</sup> a County Court Judge held that a Judge constituted as an appeal tribunal under the Act has jurisdiction to hear an appeal from the ARC involving an application for an exemption under the Act, without requiring a party to bring an application under section 66 of the Act for determination of the matter. Whether this decision would have been upheld on appeal is questionable in the writer's view. However, I feel that it does make eminent good sense to permit a Judge who is, after all, appointed under section 96 of *The British North*

*America Act*, to wear, in effect, "two hats" in sitting as an appeal tribunal under the Act. In my opinion, appropriate legislative changes should be made to permit a Judge sitting as an appeal tribunal to exercise the full powers of a County Court Judge. At present, for example, an appeal can be taken from an ARC decision to a Judge, who then determines he has no jurisdiction to deal with the particular question, there being a question of law involved. The proceedings are then adjourned or the appeal is denied for want of jurisdiction, so that the appellant is required to apply under section 66 of the Act. The matter could conceivably come before the same County Court Judge sitting as a County Court Judge under section 66 of the Act. An application under section 66 involves affidavit material and takes some time to prepare, whereas the matter could have been handled expeditiously by allowing the Judge to hear the parties orally in the appeal proceedings, determine the question of law involved, and finally dispose of the matter.

My suggestion becomes problematic at the OMB stage, where the members are not necessarily lawyers, and are appointed by the Lieutenant Governor in Council and not under section 96 of *The British North America Act*.

### (d) Appeals to OMB

Sections 52(15) and 63(3) of the Act permit an appellant to appeal directly from the ARC to the OMB where the assessment is in the amount of \$50,000 or more, or has been increased by the ARC to an amount of \$50,000 or more. It had been the practice of many solicitors in the past, in a case which was ultimately headed for the OMB, to allow the ARC to confirm the assessment without requiring the appellant to give evidence. This was done so that the appellant would not have to go through substantial preparation for the ARC. This practice was discontinued following the judgment of His Honour Judge Sweet in *Merkur et al. and City of Hamilton*.<sup>6</sup>

It is my view that an appellant whose assessment is \$50,000 or more should be entitled to appeal directly to the Judge or the OMB at his option, and thereby by-pass the ARC. Since the hearings at the present time are by way of trial de novo, neither the Judge nor the OMB would be at a disadvantage with respect to the previous proceedings, as they are entitled to disregard the previous decision completely.

However, an alternative should be considered. Appeal proceedings before

the OMB are more formal than before the ARC or Judge, and it takes many months to get an appointment for hearing. An appeal lies to the OMB irrespective of the amount of assessment involved. In my view, consideration should be given to limiting appeals to the OMB to cases where an assessment exceeds a specified amount, thus eliminating the cases of lesser importance.

## 2. ARE THE APPEAL PROVISIONS FAIR TO AN APPELLANT TAXPAYER?

In my opinion, many changes could be made to the provisions of the Act as they now stand. The following are two areas of concern:

### (a) Too Late Appeals

It is quite noteworthy that there is no provision in the Act whereby an appellant may be allowed an extension of time to appeal. The Act is too technical in this regard, and many of the old cases have worked hardships on an appellant, particularly where he may not have received a notice of assessment in the first instance for one reason or another or the notice may have come to his attention too late for him to appeal. He is left with virtually no other recourse than to attempt to make a usually fruitless application under section 76(1) (e) of the Act for a rebate of taxes by reason of "gross or manifest error". This gives an appellant very little to go on now that the section has been amended to limit the meaning of "gross or manifest error" to clerical errors only.<sup>7</sup>

Under Rule 178 of the Rules of Practice of the Supreme Court of Ontario "the Court may from time to time enlarge or abridge the time prescribed by the Rules, or by an order, for doing any act or taking any proceeding, and this power may be exercised, although the application is not made until after the expiration of the time prescribed."

It has been held<sup>8</sup> that the Court cannot extend times fixed by any statute, including time limits for appeals under the Act.

As well, section 167 of *The Canadian Income Tax Act* provides for an extension of time within which to file a notice of objection against an assessment under that Act (albeit that the circumstances under which an order may be made are somewhat limited).

In my opinion, there should be some provision similar to that in force under Rule 178, where an application



may be made to an appropriate officer, such as a Judge under the Act, to extend the time for the serving of a notice of appeal.

## (b) Assessments at less than market value

For many years, it has been observed that assessments have not been at 100% of market value, but at some much smaller percentage. The principle, established almost 50 years ago<sup>9</sup> and recently reaffirmed in the Empire Realty case<sup>10</sup>, was that the "assessments in any municipality must be equitable, and that all owners be assessed at the same proportion of values."<sup>11</sup>

The author has dealt elsewhere<sup>12</sup> with the key problem facing a taxpayer in considering what arguments or approaches he can rely upon to ensure that he bears only his fair share of the tax burden. Once market value assessment is applied, the problem will become academic; but, in the meantime, the problem still faces the taxpayer in most assessment regions.

Prior to the 1968-69 *Assessment Act*, the OMB applied the assessment equalization factor for Fort William to the cost of land under appeal, and while it confirmed that part of the assessment, it established the use of the factor in assessment appeals.<sup>13</sup> The factor was considered a good guide to the average relationship between assessed value and market value of properties in any given municipality.<sup>14</sup> By virtue of section 71(2) of the Act, the equalization factor of a municipality or locality is not to be taken into account in the assessment of land.<sup>15</sup>

However, section 64(2) of the Act now states that:

*"In determining the value at which any land shall be assessed, reference may be had to the value at which lands in the municipality are assessed"*.

This section must be read in conjunction with section 90, which states in part that a court

*"in determining the value at which any real property shall be assessed in any appeal. . . shall have reference to the value at which similar real property in the vicinity is assessed; and the amount of any assessment shall not be altered unless the . . . court is satisfied that the assess-*

*ment is inequitable with respect to the assessment of "similar real property in the vicinity. . ."*

In the writer's view, this goes against the grain of the equitable principles enunciated in the Empire Realty case and the earlier decisions to this effect. By restricting the Court in the fashion anticipated by section 90, i.e. to a consideration of similar property, the taxpayer is denied equal taxation. In the afternoon session of the Ontario Legislature debates on July 19th, 1971 (on page 4200 of Hansard) the then Minister of Municipal Affairs, the Hon. Dalton Bales, Q.C., stated that the word "vicinity" could refer to a whole municipality. It has been the author's experience in recent cases that the ARC has been restricting its consideration of the word "vicinity" to "the immediate neighbourhood".

My suggestion is that, in addition to the requirement that the assessor give an explanation of how he arrives at his assessment under section 52(7), the assessor should also be required to show that the subject property under appeal is not assessed at more than the average assessment ratio established throughout the relevant municipality. This would be in keeping with the comments of Mr. Justice Kelly in the Empire Realty case (supra) where he commented on assessments made at less than market value on page 392, as follows:

*"...notwithstanding that there rests on the assessee, as appellant, the onus of establishing error (the ultimate onus), when the Assessment Commissioner admits that he has departed from the directives in the Act, the onus of going forward (the intermediate onus) thereupon required the Assessment Commissioner to adduce evidence to prove that the method he has adopted has resulted in an assessment which will result in the same distribution of tax burden as would have maintained if the assessments had been made strictly as required by the Act."*

## CONCLUSION

I am presumptuous enough to submit that if some of my suggestions were implemented, there would be a more workable system of appeals, and the present imbalance that exists between the assessor and the assessee might be lessened. □

## Foot Notes

<sup>1</sup>See *Quance v. Ivy* (1950) O.R.397 and *City of Toronto v. Olympia Edward Recreation Club* (1955) S.C.R.454. Section 34 of *The Ontario Municipal Board Act*, R.S.O. 1970, C.323, does purport to give the OMB authority to "hear and determine all questions of law or of fact" but this section in my view does not solve the s.96 problem. The OMB for example will not hear an application for an exemption under s.3 of the Act.

<sup>2</sup>See "Jurisdiction of the County Judge Hearing Appeals" Judge Cudney, *Aspects* No. 6, p. 6.

<sup>3</sup>R.S.O. 1970, Chapter 439, section 104.

<sup>4</sup>One such article appears in *Aspects* No. 5: *Interview with Grant Sinclair*, p. 19.

<sup>5</sup>See *Point Blank School and Assessment Commissioner, Metro Toronto*, (1972) 10.R. 562.

<sup>6</sup>(1969) 10.R. 455.

<sup>7</sup>*Wilkes v. Interlake Tissue Mills* (1970) S.C.R. 441.

<sup>8</sup>Re: *Fair and Toronto* (1930) 65 O.L.R. 176.

<sup>9</sup>Re *Allen and Mimico* (1920) 19 O.W.N.750; *Chapman and McLeod vs. Park-bill* (1949) O.W.N.395.

<sup>10</sup>*Empire Realty Co. Ltd. vs. Assessment Commissioner for Metro Toronto* (1968) 2 O.R.388.

<sup>11</sup>*Ibid.* p. 390.

<sup>12</sup>See Volume 17, *Canadian Tax Journal*, Jan/Feb. 1969, p. 67 ff.

<sup>13</sup>*Lakehead Motor Inn Ltd. vs. Assessment Comm. for Fort William* OMB file P. 5036-67.

<sup>14</sup>In *Assessment Commissioner for County of Waterloo vs. Slater Steel Ltd.*, OMB file P. 3554-67, the OMB determined actual value based on the evidence of an appraiser and applied it to the ratio of one-third, which it found the Commissioner applied generally throughout the municipality.

<sup>15</sup>The OMB has not been uniform in construing this section. In *Douglas Aircraft Company of Canada Ltd. and the Corporation of the Town of Mississauga*, OMB file R-2926, the OMB considered the assessment equalization factor for the Town of Mississauga in reaching its decision. In *Durham Chair & Store Fixtures Ltd. and the Assessment Commissioner, Region No. 25*, OMB file R-5447-71, the OMB refused to consider evidence of an equalization factor.

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